

ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

EXHIBIT 10

P = Permitted Use C = Conditional Use Permit -- = Not Permitted

RESIDENTIAL USES	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	W/O	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P		
Bed & Breakfast (Group 1)	-	-	-	P	P	P	-	-	P	P	P	P	P	P	P	-	-	-	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-
Bed & Breakfast (Group 2)	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	-	-	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-
Condominium Residential	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-	-	-	-	-	-	-	-	C	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Conservation Single Family Residential	-	-	-	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Duplex Residential	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Group Residential	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	-	-	-	-	-	-	-	-	C	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Mobile Home Residential	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Multifamily Residential	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	-	-	-	-	-	-	-	-	C	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement Housing (Small Site)	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retirement Housing (Large Site)	-	-	-	-	-	-	-	-	C	C	C	C	C	C	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Single-Family Attached Residential	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Single-Family Residential	P	P	P	P	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	P	-	C	3	4	
Small Lot Single-Family Residential	-	-	-	-	-	P	P	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Townhouse Residential	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Two-Family Residential	-	-	-	-	P	-	-	-	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Short-Term Rental ¹³	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

COMMERCIAL USES	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	W/O	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P	
Administrative and Business Offices	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	C	P	P	P	P	P	P	P	P	P	P	1	-	2	-	3	4
Agricultural Sales and Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	4	
Alternative Financial Services ¹²	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Art Gallery	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Art Workshop	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Automotive Rentals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Automotive Repair Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Automotive Sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Automotive Washing (of any type)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Bail Bond Services ¹⁰	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Building Maintenance Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Business or Trade School	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Business Support Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Campground	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Carriage Stable	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cocktail Lounge	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Commercial Blood Plasma Center	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Commercial Off-Street Parking	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Communications Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Construction Sales and Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Consumer Convenience Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Consumer Repair Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Convenience Storage	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Drop-Off Recycling Collection Facility	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Electronic Prototype Assembly ¹⁵	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Electronic Testing ¹⁶	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Equipment Repair Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Equipment Sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Exterminating Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Financial Services	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-																					

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4 Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2-863; 10-Subject to 25-2-177 & 25-2-650; 11-Subject to 25-2-587 (D);

ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

P = Permitted Use C = Conditional Use Permit -- = Not Permitted

COMMERCIAL USES continued	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	W/O	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P	
Kennels																																							
Laundry Services																																							
Liquor Sales																																							
Marina																																							
Medical Offices -- exceeding 5000 sq. ft. gross floor area																																							
Medical Offices -- not exceeding 5000 sq. ft. gross floor area																																							
Monument Retail Sales																																							
Off-Site Accessory Parking ¹⁴																																							
Outdoor Entertainment																																							
Outdoor Sports and Recreation																																							
Pawn Shop Services																																							
Pedicab Storage and Dispatch																																							
Personal Improvement Services																																							
Personal Services																																							
Pet Services																																							
Plant Nursery																																							
Printing and Publishing																																							
Professional Office																																							
Recreational Equipment Maint. & Stor.																																							
Recreational Equipment Sales																																							
Research Assembly Services																																							
Research Services																																							
Research Testing Services																																							
Research Warehousing Services																																							
Restaurant (General)																																							
Restaurant (Limited)																																							
Scrap and Salvage																																							
Service Station																																							
Software Development																																							
Special Use Historic	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4-Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2-863; 10-Subject to 25-2-177 & 25-2-650; 11-Subject to 25-2-587 (D); 12-Subject to 25-2-816; 13-Permitted in MU and V combining districts, subject to 25-2, Subchapter E, Art. 4, Subsec. 4.2.1.C; 14-Refers to 25-6-501; 15-Refers to 25-2-817; 16-Refers to 25-2-811.

PC - Permitted in the district, but under some circumstances may be conditional; CP - Conditional in the district, but under some circumstances may be permitted

ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

P = Permitted Use C = Conditional Use Permit -- = Not Permitted

CIVIC USES	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	WLO	CS	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P						
Administrative Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	3	4						
Aviation Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	3	4						
Camp	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	P	--	--	3	4						
Cemetery	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	3	4					
Club or Lodge	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	4						
College and University Facilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	4						
Communication Service Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C	P	P	C	P	P	C	P	P	P	P	P	P	1	P	2	P	3	4				
Community Events	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8					
Community Recreation (Private)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P	C	P	P	C	P	P	P	P	P	1	--	2	--	3	4					
Community Recreation (Public)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P	C	P	P	C	P	P	P	P	P	1	--	2	--	3	4					
Congregate Living	--	--	--	--	--	--	--	--	--	C	C	C	C	C	C	C	C	C	C	P	--	C	P	C	P	--	P	P	P	P	P	P	1	--	--	--	--	3	4				
Convalescent Services	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	C	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	--	3	4				
Convention Center	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--					
Counseling Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--					
Cultural Services	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	--	P	P	P	P	C	P	P	P	P	P	P	P	P	P	1	--	2	--	3	4					
Day Care Services (Commercial)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	C	P	C	P	P	P	P	P	P	P	P	P	P	--	2	--	3	4					
Day Care Services (General)	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	--	P	C	P	P	P	P	P	P	P	P	P	1	--	2	--	3	4						
Day Care Services (Limited)	C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	P	C	P	P	P	P	P	P	P	P	P	1	--	2	--	3	4						
Detention Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	--	3	4					
Employee Recreation	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	1	P	--	--	--	3	4				
Family Home	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	P	P	C	P	P	--	P	P	P	P	P	--	1	--	--	--	3	4					
Group Home, Class I (General)	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	--	P	C	P	P	--	P	P	P	P	P	P	1	--	--	--	--	3	4					
Group Home, Class I (Limited)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	P	C	P	P	--	P	P	P	P	P	P	1	--	--	--	--	3	4					
Group Home, Class II	--	--	--	--	--	--	--	--	--	--	C	C	C	C	C	C	C	C	C	--	C	P	C	P	--	P	P	P	P	P	P	1	--	--	--	--	3	4					
Guidance Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	--	3	4					
Hospital Services (General)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Hospital Services (Limited)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Local Utility Services	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	C	P	C	P	P	P	P	P	P	P	P	1	--	2	--	--	3	4					
Maintenance and Service Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Major Public Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Major Utility Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Military Installations	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Park and Recreation Services (General)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Park and Recreation Services (Special)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Postal Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				
Private Primary Educational Facilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	C	P	P	C	P	P	P	P	P	P	--	--	1	--	--	--	--	3	4					
Private Secondary Educational Facilities	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P	P	C	P	P	C	P	P	P	--	--	1	--	--	--	--	3	4				
Public Primary Educational Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C	P	C	P	P	C	P	P	P	P	P	--	--	1	--	--	--	--	3	4				
Public Secondary Educational Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C	P	C	P	P	C	P	P	P	P	P	--	--	1	--	--	--	--	3	4				
Railroad Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	1	--	2	--	--	3	4		
Religious Assembly	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	C	P	P	C	P	P	P	P	P	P	P	P	P	1	P	2	--	--	3	4				
Residential Treatment	--	--	--	--	--	--	--	--	--	C	C	C	C	C	C	C	C	C	C	--	C	P	C	P	--	P	P	P	P	P	P	P	1	--	--	--	--	3	4				
Safety Services	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	--	P	C	P	C	P	P	P	P	P	P	P	1	--	2	--	--	3	4					
Telecommunication Tower ⁷	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC	4					
Transitional Housing	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	1	--	--	3	4		
Transportation Terminal	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	1	--	2	--	3	4
All other Civic Uses	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	2	--	--	3	4				

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4 Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2-863; 10-Subject to 25-2-177 & 25-2-650; 11-Subject to 25-2-587 (D); 12-Subject to 25-2-816; 13-Permitted in MU and V combining districts, subject to 25-2, Subchapter E, Art. 4, Subsec. 4.2.1.C; 14-Refers to 25-6-501; 15-Refers to 25-2-817; 16-Refers to 25-2-811.

PC - Permitted in the district, but under some circumstances may be conditional; CP - Conditional in the district, but under some circumstances may be permitted

EXHIBIT 11

1

CAUSE NO. D-1-GN-12-000878

HILL COUNTRY ESTATES \$ IN THE DISTRICT COURT OF
HOMEOWNERS ASSOCIATION, \$
AND COVERED BRIDGE \$
PROPERTY OWNERS \$
ASSOCIATION, INC., \$
 Plaintiffs, \$ TRAVIS COUNTY, TEXAS
VS. \$
 \$
GREG GUERNSEY, THE CITY OF \$
AUSTIN, \$
 Defendants. \$ 250TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

GREG GUERNSEY

FEBRUARY 20, 2013

ORAL DEPOSITION OF GREG GUERNSEY, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on February 20, 2013, from 10:11 a.m. to 5:45 p.m., before Pamela Nichols, CSR in and for the State of Texas, reported by machine shorthand, at City Hall, 301 West Second Street, 4th Floor, Austin, Texas, pursuant

GREG GUERNSEY

2/20/2013

2

1 to the Texas Rules of Civil Procedure and the provisions
2 stated on the record or attached hereto.

3
4 A P P E A R A N C E S

5
6 FOR THE PLAINTIFFS:

7 Mr. Eric J. Taube
8 HOHMANN, TAUBE & SUMMERS, L.L.P.
9 100 Congress Avenue
10 18th Floor
11 Austin, Texas 78701
12 Telephone: (512) 472-5997
13 E-mail: [REDACTED]

14
15 FOR THE DEFENDANTS:

16 Ms. Chris Edwards
17 Assistant City Attorney
18 CITY OF AUSTIN
19 Law Department
20 301 West 2nd Street
21 Austin, Texas 78701
22 Telephone: (512) 974-2419
23 E-mail: [REDACTED]

24
25 ALSO PRESENT:

Robert J. Kleeman, Plaintiffs' Representative

GREG GUERNSEY

2/20/2013

22

1 Q. Which ones? All or some?

2 A. All of those, yes.

3 Q. Okay. We're obviously going to go into that
4 in some detail here in a minute. But as a general
5 proposition, from the period of time from, let's say
6 2005 up and through the present time, who has the
7 ability at the City to make land use determinations?

8 A. The authority actually may be delegated on my
9 behalf.

10 Q. As a director?

11 A. As a director, all the way down to frontline
12 staff. With every, I guess you could say every building
13 permit, every site plan that would come in for review
14 and possible approval, there's a use determination
15 that's made with every application.

16 Q. Okay.

17 A. And so if someone, for instance, said, I'm
18 going to build a fast-food restaurant, basically a
19 restaurant limited or restaurant general, there is a
20 determination made by staff at some level on any given
21 day at any given time to approve a building permit or a
22 site plan or something along that line.

23 Q. And when you say frontline staff, can you
24 describe for me what that includes?

25 A. For instance, a site plan case manager would

1 be responsible for doing a review of a site plan for
2 zoning compliance. They would look at the use, perhaps
3 heights and setbacks, impervious cover, those types of
4 things. Or if there was someone who was reviewing a --
5 even a residential building permit, to make sure that if
6 a building is a duplex and the plans appear to be a
7 duplex, they would make that decision and issue a permit
8 for approval of a duplex.

9 Q. Can you define for me, Mr. Guernsey, what a
10 land use determination is?

11 A. A land use determination is really reviewing
12 an application that may come before me or any of my
13 staff or a -- which could either be an actual
14 application or a simple, I guess you could say request.
15 It could take the form of a letter. It can take the
16 form of a conversation, conference that could occur
17 either at my level or other levels, determine whether a
18 land use fits one of the definitions that are found in
19 the Land Development Code.

20 And there's actually a section, I think,
21 of the Code that, under 25-2 probably, that addresses
22 that better.

23 Q. Okay. We'll go through that in a second.

24 Can anyone make a land use determination
25 request? In other words, do I have to be the property

1 A. Are you asking about a structure or are you
2 asking about a use?

3 Q. I'm actually asking about a structure,
4 regardless of use. Is an outdoor amphitheater usually
5 and customarily associated with a church?

6 A. It could be.

7 Q. An outdoor amphitheater?

8 A. Could be.

9 Q. Tell me one other instance where there is an
10 outdoor amphitheater in the city of Austin associated
11 with a church.

12 A. I could not name one off the top of my head.

13 Q. And when you say an outdoor amphitheater could
14 be customarily associated with a church, what's your
15 basis for that? How could it be?

16 A. It depends on what the use of the structure is.

17 Q. So it's your testimony that a land use is
18 dependent upon who's using it as opposed to what's on it?

19 A. Who is using it?

20 Q. Sure.

21 A. Versus?

22 Q. What's on it.

23 A. It depends on the -- A use determination
24 really goes back to what is the use of that property. I
25 don't know if it really makes a difference on who that

GREG GUERNSEY

2/20/2013

37

1 party is so long as the use is consistent. So whether
2 you used it or I used that building, it really goes to
3 if you were operating the use as a used car lot, and
4 there may be instances where we have theaters or car
5 lots or structures that may have been used as a car lot
6 that may have been once a theater or once a
7 amphitheater, whatever, it really depends on what that
8 use is, not necessarily what the structure is.

9 Q. But you would agree with me, would you not,
10 Mr. Guernsey, that in your experience, the totality of
11 your experience with the City of Austin, there is not a
12 single amphitheater, outdoor amphitheater, that is
13 currently being used as an accessory to a church or a
14 synagogue or a mosque or any other house of worship,
15 right?

16 A. How are you defining "amphitheater"?

17 Q. How about something that is an outdoor open
18 structure with seating?

19 A. I believe there are structures probably in
20 Austin somewhere that have either outdoor prayer gardens
21 or -- I know the church -- my church actually has a
22 couple of benches outside where people can sit and
23 people can talk. There are other -- probably other
24 venues that are out there where there may be a place
25 where people can congregate outside.

GREG GUERNSEY

2/20/2013

38

1 Q. Does your church have outdoor lighting for
2 stadium seating?

3 A. No, it does not.

4 Q. Are you aware of any other church that has
5 outdoor lighting for stadium seating?

6 A. Not to my knowledge.

7 Q. Are you aware of any church or synagogue or
8 mosque or any other house of worship in the city of
9 Austin that has an outdoor structure that is designed to
10 seat 1,000 people?

11 A. No.

12 Q. And a prayer garden, describe for me what a
13 prayer garden is. Let's make sure you and I are talking
14 about the same thing.

15 A. Well, there are -- if there's a place where
16 people go to either meditate, basically those areas
17 where people may go out and congregate for may be a
18 special ceremony.

19 Q. In your definition of prayer garden,
20 Mr. Guernsey, would that include outdoor amplification
21 systems?

22 A. There may be in certain circumstances
23 amplified sound.

24 Q. Well, I'm not talking about somebody bringing
25 out an amplifier into that area. I'm talking about

GREG GUERNSEY

2/20/2013

39

1 something where it is part of the structure or design
2 for amplified sound. Are you aware of any of those?

3 A. Not specifically.

4 Q. Mr. Guernsey, if you look at 25-1-21 on the
5 "Definitions" section, and specifically I'd like you to
6 take a look at the definition under subparagraph 21,
7 "Conditional Use." You got it?

8 A. Yes.

9 Q. Okay. A conditional use in the Code is
10 defined as -- it "means a use that is allowed on a
11 discretionary and conditional basis in accordance with
12 the conditional use process established by Chapter 25-5
13 (Site Plans)."

14 Have I read that correctly?

15 A. Yes.

16 Q. Okay. Conditional use is for community
17 recreation?

18 A. Could you clarify that?

19 Q. Let me ask it this way: In order to have a
20 conditional use approved by the City, do you have to
21 request a conditional use permit?

22 A. For a use that's identified as a conditional
23 use, yes, in that circumstance.

24 Q. Take a look at the definition, if you would,
25 in Paragraph 37 of "Enclosed."

GREG GUERNSEY

2/20/2013

47

1 Q. But you would agree with me that for the
2 purpose of looking at this definition of "use," use has
3 nothing to do with the nature of the person doing it;
4 it's the activity that governs "use" by definition.
5 Correct?

6 A. As defined by "use" under this particular
7 section, not necessarily under use determinations.

8 Q. A structure under 109 is defined to "Mean a
9 building of any kind, or a piece of work artificially
10 built-up or composed of parts joined together in a
11 definite manner," correct?

12 A. Yes.

13 Q. Take a look, if you would, please, at Section
14 25-1-501. It's entitled "Initiation of Amendment."
15 (Witness complies.)

16 Q. Are you with me?

17 A. Yes, 25-1-501, "Initiation of Amendment."

18 Q. It says that "Other than the city council, or
19 [sic] the planning commission" -- excuse me -- "only the
20 Planning Commission may initiate an amendment to the
21 regulations in this title."

22 Have I read that correctly?

23 A. Yes.

24 Q. You would agree with me, would you not,
25 Mr. Guernsey, that as the director, you don't have the

2/20/2013

GREG GUERNSEY

48

1 authority to unilaterally amend the code, do you?

2 A. That's correct.

3 Q. And you would agree with me, would you not,
4 that a land use determination is an interpretation of
5 the Land Development Code, not an amendment to the Code,
6 correct?

7 A. Correct.

8 Q. Mr. Guernsey, if there are provisions in the
9 Land Development Code that conflict --

10 Let me ask you this: Have you -- in your
11 experience, have you run into provisions of the Land
12 Development Code that appear to conflict with each
13 other?

14 A. I'm sure I have.

15 Q. I was pretty certain of that, too.

16 Would you agree with me that if you were
17 interpreting conflicting provisions, that a more
18 restrictive provision governs over a more general
19 provision?

20 A. Generally, yes.

21 Q. Are there instances where that is not the case
22 that you can think of?

23 A. I think it would -- yes, there may be
24 instances where you'd have to look at what the matter is
25 before you.

2/20/2013

GREG GUERNSEY

57

1 determination to everybody who can make them in the
2 future to make sure that they're acting consistently
3 with what you've done with regard to a particular type
4 of situation?

5 A. I guess it depends on that -- that situation
6 that you're speaking of. If it's specific to a
7 particular property, then that may be the answer is yes.
8 If it's a more general one, that may be a little bit
9 more difficult to do.

10 Q. Well, I guess is there a process by which the
11 City accumulates land use determinations and advises
12 those people that are making them of the way the City
13 has determined a particular land use is applicable,
14 nonapplicable, available or not available?

15 A. And I guess there's -- yes. My understanding
16 is that Jerry Rusthoven would have, I guess you could
17 say is the keeper of those use determinations that may
18 have been done in the past.

19 Q. Okay. Is there some attempt by Mr. Rusthoven
20 or by you to make sure that the rest of the rank-and-
21 file use determiners get that information?

22 A. As I said before, I think that kind of depends
23 on the circumstance that's before them.

24 Q. Well, let me use the Promiseland West as an
25 example. Okay? The City has taken a position that

2/20/2013

GREG GUERNSEY

58

1 there was a land use determination made in 2008,
2 correct?

3 A. Correct.

4 Q. That land use determination, again allegedly,
5 was made by virtue of a private conversation between you
6 and Mr. Conley; is that correct?

7 A. There was a meeting, actually, I think that
8 took place in probably November, with staff and
9 Mr. Conley and I think representatives of the church.
10 And then there was a follow-up exchange of e-mails, and
11 there may have been -- I don't know if there were or
12 were not -- telephone conversations. I probably don't
13 have records even back that far, but there was probably
14 a conversation that we had, certainly by e-mail.

15 Q. Isn't it correct -- I'd be happy for you to
16 look at the pleadings filed in this case. Mr. Guernsey,
17 isn't it correct that the City has taken the position
18 that the land use determination was made by virtue of
19 your e-mail to Mr. Conley in December of 2008; that's
20 the determination?

21 A. There is a determination that was based on a
22 response to, I believe a letter that was transmitted by
23 e-mail, I think with an exhibit, to me from --

24 Q. We'll clearly go over all that. I just want
25 to make sure that we've placed it.

1 that's not something that's a permanent use, but it's a
2 temporary use that would be there -- usually limited by
3 30 days at the most.

4 Q. Mr. Guernsey, if the City has made a land use
5 determination that the City then later determines was
6 made in error, what would be the process for altering
7 the land use determination that was made in error from
8 the City? How would you go about doing that?

9 A. I guess what we were discussing before, if
10 there was a use and it was prohibited, and then was
11 found that it's permitted? I guess, depending on the
12 circumstance, the individual would come in with a permit
13 and we would approve it.

14 Q. How about the reverse circumstance where a
15 land use was permitted, in other words, determined to be
16 permitted, and then the City later determined that that
17 was -- determination was made in error?

18 A. I guess it would be probably treated as a
19 nonconforming use, because at the time a determination
20 may have been made it might be considered a use that was
21 meeting all applicable codes. I guess someone could
22 also take the City to court over the issue.

23 Q. Take the City to court because the --

24 A. If someone --

25 Q. -- the determination was made in error?

2/20/2013

GREG GUERNSEY

99

1 Q. And I'm not sure what a columbarium is. Are
2 you? I think I know, but --

3 A. I think I know, too. I'd have to go back and
4 actually look up the definition. I think the state
5 definition has actually changed. But no, I would agree
6 that it's not an amphitheater.

7 Q. Okay. So none of the accessory uses for
8 principal civic use would be applicable to the
9 amphitheater, would it?

10 A. As an accessory, no. As a principal, yes, in
11 this case.

12 Q. An amphitheater, are you aware of a bunch of
13 churches, synagogues, mosques or places of worship that
14 are outdoor amphitheaters in the city of Austin?

15 A. The particular case that was presented to me,
16 and I would have to go back to look through some of the
17 documents which may be in here or that you have --

18 Q. Yeah, we will.

19 A. -- I think it was described that the
20 activities that would take place in one building, the
21 main building, would also be the same that would take
22 place in this particular building, the amphitheater
23 building.

24 Q. So disc golf?

25 A. I'm not sure what you mean.

1 The property in question where the Promiseland West
2 Church is, that's a -- that's got an RR zoning
3 classification, does it not?

4 A. It does today. I don't know if it did in '05.
5 I believe in '08 it had an RR classification. It may
6 have been Interim RR. I would actually have to probably
7 go back and look at the file. But the uses that are
8 permitted in an interim zoning classification versus a
9 permanent zoning classification would be the same.

10 Q. And under that classification, things like
11 indoor entertainment and indoor sports and recreation
12 are prohibited, correct?

13 A. Yes.

14 Q. So is outdoor entertainment?

15 A. Yes.

16 Q. Outdoor sports and recreation?

17 A. Yes.

18 Q. Personal improvement services?

19 A. Yes.

20 Q. Personal services?

21 A. Yes.

22 Q. And theater services, correct?

23 A. Theater, yes.

24 Q. If you look at the last page of Exhibit No. 4
25 with regard to an RR classification for civic uses,

1 correct?

2 A. Yes, Page 3 of 3?

3 Q. Yes, sir.

4 Community -- excuse me -- club or lodge
5 activities would require a conditional use permit,
6 correct?

7 A. For the principal use, that's correct.

8 Q. And again, didn't we go over the fact that
9 principal and accessory uses have to be the same unless
10 otherwise specifically provided for by the Code?

11 A. As I said before, accessory uses are different
12 than the principal use.

13 Q. I understand that they're different, but
14 didn't we agree that --

15 A. And there are provisions under the Code which
16 allowed for accessory uses.

17 Q. Right. But they have to be the same -- they
18 have the same restrictions unless otherwise provided,
19 correct?

20 A. As it pertains to an accessory use, correct.

21 Q. Do you see anything under the civic use
22 category, Mr. Guernsey, that talks about outdoor
23 entertainment as being a permitted use?

24 A. I don't see outdoor entertainment as being a
25 listed use under RR on this page.

2/20/2013

GREG GUERNSEY

141

1 recreational community, club, lodge, recreational area,
2 private primary education, those are things that are
3 other than religious assembly, correct?

4 A. Yes, sir.

5 Q. So, by definition, those kinds of activities
6 are not covered under the religious assembly category;
7 is that right?

8 A. Those uses, correct.

9 Q. Are they all principal uses?

10 A. As they are listed, it's my understanding it
11 would be principal use.

12 (Exhibit No. 13 marked.)

13 Q. (By Mr. Taube) I'm going to hand you what's
14 been marked for identification as deposition Exhibit
15 No. 13. There's a couple of things that are part of 13,
16 but let me start with what's designated as Pages 002726
17 and 2727. They're at the very back of that exhibit.

18 A. Yes.

19 Q. Now, this a letter dated December 17, 2008 to
20 you from Mr. Conley. We've talked about this letter a
21 couple of times earlier in this deposition, correct?

22 A. Yes.

23 Q. Okay. And I want to go over what the letter
24 says, what you did, and some of the things that are
25 indicated. So let me start with the top. It says,

2/20/2013

GREG GUERNSEY

142

1 "Thank you for meeting with me today to discuss whether
2 an outdoor amphitheater is considered an accessory use
3 to an overall religious assembly use under RR or SF-1
4 zoning."

5 Do you recall the meeting with Mr. Conley
6 on December 17th?

7 A. As evidenced by this letter, I assume I did
8 meet with him on December 17th.

9 Q. Other than as reflected in the letter, do you
10 have a recollection of a meeting with Mr. Conley about
11 this issue on the 17th?

12 A. Yes.

13 Q. You do?

14 Who else was in the meeting besides you
15 and Mr. Conley?

16 A. I don't recall.

17 Q. Mr. Rusthoven?

18 A. I don't believe so.

19 Q. Any other members of the City staff that you
20 can recall?

21 A. No.

22 Q. Who else was there on behalf of the
23 Promiseland West Church besides Mr. Conley?

24 A. I believe it was just Mr. Conley.

25 Q. So you think there were other people there but

GREG GUERNSEY

2/20/2013

143

1 you don't know who they are today?

2 A. I can't say for sure. I know there was a
3 prior meeting where we had other people.

4 Q. Okay. Well, let's talk about the prior
5 meeting. When did the prior meeting with Mr. Conley on
6 this issue occur?

7 A. I believe that was in the prior month..

8 Q. And where was the meeting?

9 A. I don't recall the exact location of the
10 meeting.

11 Q. Who was in it?

12 A. I think probably my assistant city manager..

13 Q. Who was that at the time?

14 A. I believe it was Laura Huffman at the time.

15 Q. Okay.

16 A. And possibly Pat Murphy, and I'm sure the
17 pastor, although I can't recall his name. There may
18 have been one or two other staff there.

19 Q. Mr. Conley?

20 A. Yeah, and Mr. Conley.

21 Q. And what was the purpose? How did the meeting
22 get -- how did it get set up?

23 A. I don't recall the particulars of that. It
24 may have been called by my ACM or it may have been just
25 requested by Mr. Conley or the pastor.

GREG GUERNSEY

2/20/2013

144

1 Q. What was the purpose of the meeting; do you
2 recall?

3 A. I think it was to talk about the proposed
4 religious assembly use.

5 Q. What were you told in that meeting about the
6 outdoor amphitheater?

7 A. I don't recall the particulars of it, but I'm
8 sure we discussed the use of the property in general.

9 Q. Okay. Are you speculating or are you
10 recalling?

11 A. I'm recalling that we had a general discussion
12 of the property.

13 Q. Okay. During the course of the meeting was
14 there any suggestion that community involvement for the
15 prospective use and development of that property be
16 solicited?

17 A. I -- normally -- and I cannot say absolutely,
18 but normally we would say it's always wise to talk to
19 adjacent property owners about any use that would be
20 coming.

21 Q. In the letter that's part of Exhibit 13 from
22 Mr. Conley, he suggests that they had met with adjoining
23 neighborhood representatives and had offered to restrict
24 uses of the amphitheater. Did you have any discussions
25 with him about that?

2/20/2013

GREG GUERNSEY

145

1 A. I'm sure I did.

2 Q. Do you recall what he told you?

3 A. Oh, I think there was a willingness,
4 certainly, to further restrict the property.

5 Q. Did he tell you who they were talking to?

6 A. I do not recall.

7 Q. Did Mr. Conley or did you otherwise determine
8 that the neighborhood associations were definitely
9 interested in what was going on with this property?

10 A. I don't think that -- or the specifics came up
11 in regards to that.

12 Q. Okay. That wasn't my question.

13 A. I'm sorry.

14 Q. Did you come to understand that the
15 neighborhood associations were interested in what was
16 being proposed as an out --

17 A. As a result of this particular discussion?

18 Q. In general. I mean --

19 A. In general, I mean, no --

20 Q. Let's go back.

21 A. Sorry.

22 Q. This discussion was precipitated for the
23 purpose of talking about plans for the property,
24 correct?

25 A. Yes.

1 Q. Okay. And in particular, to determine whether
2 or not a religious use classification was going to be
3 permissible?

4 A. Yes.

5 Q. And whether or not an outdoor amphitheater was
6 part of a religious use that was permissible under the
7 zoning classification?

8 A. I'm sure it was discussed.

9 Q. Okay. And is it your understanding from that
10 discussion, or otherwise, that the neighborhood
11 associations would be very interested in that
12 determination?

13 A. Not at that particular time.

14 Q. Okay. You didn't think that the neighborhood
15 associations were going to be interested in --

16 A. No, I don't think --

17 Q. Excuse me, let me finish my question.

18 A. Sorry.

19 Q. You didn't think that the neighborhood
20 associations were going to be interested in the
21 construction of 1,000-seat-plus outdoor amphitheater in
22 the middle of their neighborhoods?

23 A. I believe it was discussed. I believe there
24 probably would be a concern. I think the meeting more
25 pertained to what would be required to go construct the

1 church.

2 Q. The church or the church and an outdoor
3 amphitheater?

4 A. The discussion was the campus, as there was a
5 -- an exhibit, which I don't see here, I think it was
6 like a conceptual map that kind of showed the layout of
7 the property.

8 Q. So you knew at the time of this meeting that
9 what was being contemplated was a campus, not a church
10 building, correct?

11 A. I don't know what you use for a campus
12 definition, but there were --

13 Q. You used it, I didn't. So --

14 MS. EDWARDS: Objection.

15 Q. (By Mr. Taube) -- what did you use when you
16 said "campus"?

17 A. Well, there would be buildings, parking,
18 various types of buildings.

19 Q. You knew that the contemplated development was
20 a campus, yes?

21 MS. EDWARDS: Objection, form.

22 A. The proposed layout was that conceptual plan.

23 Q. (By Mr. Taube) And that campus included an
24 outdoor amphitheater?

25 A. It had an amphitheater building.

1 Q. When you say "amphitheater building," what do
2 you mean?

3 A. A building that -- it's an amp- -- well, I
4 don't know how to explain. There's an amphitheater
5 building that would be on the property and that --

6 Q. Not an enclosed structure.

7 A. There are enclosed structures on the property,
8 but the amphitheater building, what I recall, was a
9 religious assembly use that would be used in the manners
10 of the other buildings on the property.

11 MR. TAUBE: Objection, nonresponsive.

12 Q. (By Mr. Taube) You understood, Mr. Guernsey,
13 that the amphitheater would be an open-air theater, not
14 an enclosed building, correct?

15 A. Not an enclosed structure.

16 Q. Was there any discussion, Mr. Guernsey, either
17 in November or December of 2008 with Promiseland West
18 about including the neighborhood association in the
19 planning and utilization of the property or use of the
20 property?

21 A. I don't believe there was a lot of discussion
22 about neighborhoods other than saying it's probably
23 important to talk to them. At that time, I don't think
24 they had a detailed site plan that had been prepared.

25 Q. Mr. Guernsey, how long did the meeting last in

2/20/2013

GREG GUERNSEY

151

1 would be approval -- well, approvals later on.

2 They state in here that the -- where is
3 it? It says in here the amphitheater building would be
4 used for the exact same type of activities as the indoor
5 or auditorium but in an outdoor setting. And so the
6 amphitheater building was actually the same use as the
7 auditorium building, which is the sanctuary building.

8 Q. Didn't we just make a -- see a determination
9 made by the City previously that just because the same
10 activities that occur indoor doesn't mean they're
11 permitted outdoor?

12 A. There's no distinction for religious assembly
13 use like there is for outdoor entertainment or indoor
14 entertainment, or outdoor sports and recreation or
15 indoor sports and recreation. That distinction is not
16 made. There's not an outdoor religious assembly or
17 indoor religious assembly use.

18 Q. What's the definition for religious assembly,
19 Mr. Guernsey?

20 A. "Religious assembly use is a regular organized
21 religious worship or religious education in a permanent
22 or temporary building. The uses exclude private primary
23 or secondary educational facilities, community
24 recreational facilities, daycare facilities, parking
25 facilities. And a property tax exemption is prima facie

GREG GUERNSEY

2/20/2013

152

1 evidence of a religious assembly use." And I just read
2 that from the Code.

3 Q. In a building, correct?

4 A. It says that organized religious worship or
5 education in a permanent or temporary building. It
6 doesn't exclusively say that it has to be indoors or
7 outdoors with respect to indoor or outdoor or sports and
8 recreation or indoor or outdoor entertainment. Those
9 are distinctions that are made under the Code.

10 Q. Is there some definition for a building that
11 you're utilizing?

12 A. Well, this is a building. The amphitheater is
13 a building.

14 Q. I'm asking you if you have a definition for a
15 building that you're utilizing in making a determination
16 that religious assembly doesn't have to be inside, that
17 it can be outside. What's the definition that you're
18 using of a building, Mr. Guernsey?

19 A. Roof supported by walls. But I believe
20 religious assembly activities could take place outdoors.

21 Q. Mr. Guernsey, is the outdoor amphitheater,
22 does it have a roof supported by walls?

23 A. The amphitheater building does, to my
24 knowledge.

25 Q. Have you seen some plans or specifications

1 MS. EDWARDS: Objection, form.

2 Q. (By Mr. Taube) On what?

3 A. Well, religious activities certainly take
4 place outdoors where they're on church property.
5 Weddings, you know, Sunday School events that might take
6 place, Easter sunrise service, the prayer garden I spoke
7 of earlier, those are typically not indoors. I'm not
8 sure -- I guess I don't understand your question.

9 Q. The issue that I thought you were making a
10 determination on is whether or not an outdoor
11 amphitheater was a -- was considered an accessory use to
12 religious assembly. And in order to constitute an
13 accessory use to a religious assembly, didn't you have
14 to determine that it had to meet the definition of
15 religious assembly? Right?

16 A. I determined it was a religious assembly use,
17 and it was a principal use since, as described by
18 Mr. Conley, the activity that would be taking place
19 indoors in the auditorium building would be the same as
20 taking place in the auditorium building.

21 MR. TAUBE: Objection, nonresponsive.

22 Q. (By Mr. Taube) My question, Mr. Guernsey --

23 A. I'm sorry.

24 Q. -- very specifically is, in Mr. Conley's
25 letter, the first paragraph says, "Thank you for meeting

1 Q. Yes.

2 A. And we spoke to a building inside or outside?

3 Q. We spoke to a building.

4 A. An activity being inside or outside?

5 Q. Yes, sir.

6 A. Okay. The following uses are listed as
7 accessory uses. Not all of these accessory uses may be
8 inside or outside. Some of these, a refreshment stand,
9 may be inside or outside as it relates to a civic use.

10 Q. Mr. Guernsey, section 25 --

11 MS. EDWARDS: I'm sorry, we really do
12 need to take a break.

13 MR. TAUBE: Can I finish my questions on
14 this topic?

15 MS. EDWARDS: How much longer? I need a
16 break.

17 MR. TAUBE: Go ahead.

18 (Break from 2:55 p.m. to 3:03 p.m.)

19 Q. (By Mr. Taube) The meeting that occurred in
20 November of 2008, that was requested by Ms. Huffman,
21 wasn't it?

22 A. I can't say for sure.

23 Q. How did it get communicated to you that there
24 was going to be a meeting that required your presence?

25 A. Usually it's by an Outlook invitation.

GREG GUERNSEY

2/20/2013

158

1 Q. Do you recall specifically whether you talked
2 to Ms. Huffman about who had told her they needed to
3 have a meeting with you on this issue?

4 A. No, not in particular. Usually I would just
5 be invited to the meeting.

6 Q. Had you had any prior communications from the
7 church prior to the meeting that you had with
8 Ms. Huffman?

9 A. No.

10 Q. And can anybody send you an Outlook invitation
11 and get a meeting scheduled just because they want it?

12 A. People ask.

13 Q. Okay. But normally somebody would have to ask
14 you for a meeting and you would have to agree, correct?

15 A. Correct.

16 Q. In this particular case, this meeting was
17 requested by Ms. Huffman, wasn't it?

18 A. I can't say for sure.

19 Q. Is that what you believe?

20 A. I believe, since she was present. And I want
21 to say it's Ms. Huffman. I don't think Sue had started
22 yet.

23 Q. And did you have any discussions with
24 Ms. Huffman prior to the meeting about the nature of the
25 meeting?

GREG GUERNSEY

2/20/2013

159

1 A. No.

2 Q. Were you told that there had been a prior
3 communication to the church that an outdoor amphitheater
4 wasn't permitted under a religious assembly
5 classification?

6 A. Not that I'm aware.

7 Q. No one ever told you that?

8 A. No.

9 Q. Did you -- and is it your testimony that you
10 didn't ask why you had to go to a meeting with
11 Ms. Huffman and a church -- Well, strike that.

12 Pretty unusual, isn't it, for Ms. Huffman
13 to request a meeting with you and a landowner. I mean,
14 that doesn't happen every day, does it?

15 A. Not every day. It's not uncommon. Even today
16 Sue Edwards, my manager, would sometimes schedule a
17 meeting and I would sit in, perhaps with other staff,
18 Chuck Lesniak, for instance, who is the current
19 environmental officer, may sit down for some preliminary
20 meeting on a project.

21 Q. But it's a meeting with Ms. Huffman present,
22 okay, would have been requested by Ms. Huffman, wouldn't
23 it?

24 A. I believe so. Like I said, I can't say for
25 sure. I've answered that a couple of times now, so --

1 used for a religious assembly use in my response.

2 MR. TAUBE: Objection, nonresponsive.

3 Q. (By Mr. Taube) Mr. Conley tells you that this
4 facility, the indoor facility, would be available for
5 non-religious non-profit civic uses; yes or no?

6 MS. EDWARDS: Objection, form.

7 A. Yes, if you take the letter out of context.

8 Q. (By Mr. Taube) Well, I just read the letter.
9 How can I take it out of context?

10 A. I think you have to look at the entire letter
11 in order to address his question and look at my entire
12 response to the answer to his letter.

13 Q. Well, his question was whether or not an
14 outdoor amphitheater is an accessory use, right? That's
15 the specific question that he asks you, and you don't
16 response to that, do you, or do you tell him no?

17 A. I respond by saying that it is a religious
18 assembly use, is part of the primary use for both the
19 building as he describes it, the indoor auditorium, and
20 the amphitheater building.

21 Q. So, Mr. Guernsey, is the response to
22 Mr. Conley's question whether an outdoor amphitheater is
23 considered an accessory use, the answer to that question
24 is no?

25 A. Correct.

1 Q. And it's your testimony that notwithstanding
2 the fact that Mr. Conley says that there are specific
3 non-religious uses that would be made of this facility,
4 that that's still a religious assembly use; is that
5 right?

6 A. Based on his letter and my response, yes.

7 Q. And is it your testimony, Mr. Guernsey, that
8 because there is a primary use for religious assembly,
9 that the fact that there are non-religious non-profit
10 civic uses being made of that facility doesn't matter?

11 MS. EDWARDS: Objection, form.

12 A. Could you clarify?

13 Q. (By Mr. Taube) Your testimony is that
14 because -- and let's just look at your e-mail. It says,
15 "Since the worship building and the outdoor amphitheater
16 are being primarily used for religious assembly uses, I
17 don't see a problem with these two facilities
18 co-locating on the property."

19 A. Yes.

20 Q. So the fact that Mr. Conley's statement that
21 the facility would be used or available for
22 non-religious uses means that the non-religious uses are
23 irrelevant so long as they are subordinate to or, in
24 your words, not the primary use for the building?

25 A. They're incidental, in that religious assembly

GREG GUERNSEY

2/20/2013

164

1 uses throughout Austin provide their facility for use by
2 other non-profits, you know, for other activities,
3 whether it's, as he mentions in here specifically, Boy
4 Scout/Girl Scout meetings, could be a neighborhood
5 meeting. You know, there are numerous things that
6 happen within a religious assembly use that may not
7 solely be around worship.

8 Q. So your testimony is that any use which is
9 incidental is irrelevant?

10 A. I'm not saying it's irrelevant. What I'm
11 saying is the primary use still must be the religious
12 assembly use for worship. It still would have to be
13 considered a tax exempt property based on the
14 definition. It couldn't be those things like a daycare
15 or secondary educational facility or primary educational
16 facility. But there are activities which a church does,
17 whether storing food or clothing for the homeless and
18 handing that out, having Boy Scout/Girl Scout meetings,
19 which I think is very common. Those are things that a
20 church would normally allow and use as part of their
21 facility which may not be directly going in for a Sunday
22 or Wednesday or Saturday worship.

23 Q. The church would only have outdoor concerts?

24 A. I'm aware of in -- no, but I'm aware that
25 there are benefits that take place on -- you know, in

1 services?

2 A. I do not know. They are -- I assume when
3 somebody dies or gets married, it might be held in that
4 same facility; I don't know.

5 Q. How many days does the Promiseland West Church
6 plan to use the outdoor amphitheater for wedding
7 ceremonies?

8 A. I don't know.

9 Q. How many days a week does the Promiseland West
10 Church plan on using the outdoor amphitheater for
11 concerts?

12 A. I don't know. Right now I'm not aware that
13 they have an outdoor amplification permit. So unless
14 they're acoustic, I'm not sure.

15 Q. How many days a week does the Promiseland West
16 Church plan on holding civic neighborhood meetings in
17 the outdoor amphitheater?

18 A. I don't know.

19 Q. How many days a week does the Promiseland West
20 Church plan on utilizing the outdoor amphitheater for
21 public meetings or graduations?

22 A. I don't know.

23 Q. And it's your testimony that religious
24 assembly is a principal use outdoors; is that correct?

25 A. The religious assembly as defined by the Code,

GREG GUERNSEY

2/20/2013

169

1 which I read earlier, is an activity that can take place
2 in a building or could take place out of a building, and
3 that our Code does not distinguish between indoor or
4 outdoor religious assembly use.

5 Q. Again, Section 25-2-6(B)(41) defines
6 religious --

7 A. Wait, 25-2?

8 Q. 25-2-6 -- you were just looking at it -- sub
9 (B)(41), definition for religious assembly?

10 A. Okay.

11 Q. "... is a regular organized religious worship
12 or religious education in a permanent or temporary
13 building," correct?

14 A. Correct.

15 Q. And it's your understanding that a building is
16 -- can be indoors or outdoors; is that right?

17 A. Building; roof, walls, floor. And the
18 amphitheater building, as far as I know, is a building.

19 Q. A building can be either open-air or closed;
20 is that your testimony?

21 A. I'm not sure. By open-air, it's not enclosed
22 but it is a building.

23 Q. Is the -- for example, is The Backyard, is
24 that a building?

25 A. I've never been to The Backyard. I'm not sure

1 A. Okay. I see --

2 Q. They're on 2516 as an interested party,
3 correct?

4 A. Right.

5 Q. And the Hill Country --

6 A. William Dabbert?

7 Q. William Dabbert.

8 MS. EDWARDS: I'm sorry, I don't see
9 where that's on 2516.

10 MR. TAUBE: Bottom left-hand column.

11 MS. EDWARDS: Oh, thank you, uh-huh.

12 Q. (By Mr. Taube) And then the Hill Country
13 Estates Homeowners Association, Charlisa Bentley.

14 A. Bentley. Yes, I see that.

15 Q. So no question that my clients are interested
16 parties as it relates to that site plan application,
17 right?

18 A. Right. I'm assuming these came from the site
19 plan files and that they are accurate, and I have no
20 reason to believe otherwise.

21 Q. It didn't come from me. It comes from your
22 documents.

23 A. Right. And it is the second site plan we're
24 talking about, too.

25 Q. And are you familiar with the Board of

1 Adjustment rules?

2 A. Generally. I don't have them committed to
3 memory.

4 Q. Well, I'll help you.

5 (Exhibit No. 21 marked.)

6 Q. (By Mr. Taube) I'm going to hand you what's
7 been marked for identification as deposition Exhibit
8 No. 21. Mr. Guernsey, can you confirm that those are
9 the "Rules of Procedure for the Board of Adjustment and
10 Sign Review Board"?

11 A. Yes, as adopted, I guess November 24th, 2008,
12 they appear to be -- they appear to be correct.

13 Q. Take a look at Exhibit 21, the Board of
14 Adjustment rules, under the heading of "Standing"
15 (C) (5).

16 A. (C) (5). (Witness complies.) Okay.

17 Q. It's correct, is it not, Mr. Guernsey that --
18 Well, first let me ask you this: The Board of
19 Adjustment Rule Article 1 -- excuse me, (C) (1).

20 A. (C) (1)?

21 Q. Yes, sir. It talks about "Standing." It
22 says, "Appeals to the Board of Adjustment may be filed
23 by the agent or owner of property ... or by any
24 aggrieved or by any city officer -- or any person
25 aggrieved, or by any City officer, department, board."

1 So it doesn't have an interested party
2 definition like we just looked at with regard to the
3 City Code, even though my clients, you've already
4 agreed, are interested parties, correct?

5 A. It does not reference one on this section.

6 Q. And you would also agree with me, would you
7 not, Mr. Guernsey, that the determination as to who has
8 standing to appeal is made under (C)(5) by the Board of
9 Adjustment, not by somebody else. It says, "If the
10 Board, on hearing the evidence regarding the applicant's
11 standing, dismisses the appeal for lack of standing, the
12 Board's action shall constitute a final order."

13 In other words, it's the Board that's
14 making that decision, not somebody else, correct?

15 A. If there was something before them, they have
16 that ability, yes.

17 Q. Now, the Board of Adjustment Rules state --
18 Well, first, is there a city form for an appeal of an
19 administrative decision that is not an interpretation?

20 A. Say that again.

21 Q. Is there a form for an appeal of an
22 administrative decision, for example by you, a land use
23 decision?

24 A. There is a, I guess you could say an
25 interpretation form that the Board of Adjustment has.

GREG GUERNSEY

2/20/2013

211

1 Q. Could the approval of the restrictive covenant
2 be appealed as an administrative land use decision?

3 A. I would need time to think about that.

4 Q. Well, why is it something that you hesitate on?

5 A. Because it's not necessarily -- a restrictive
6 covenant of this type is not necessarily one that is
7 required by the City. It can be certainly offered by an
8 applicant. A site plan application, I guess that issue
9 could come up.

10 Q. Is it your testimony that your December 2008
11 e-mail did not take the offer of a restrictive covenant
12 as part of the consideration for your decision?

13 A. I don't think that my response to Mr. Conley
14 accepted or rejected that offer. And I would -- let me
15 go back and I'll look at my e-mail. I don't think I
16 spoke to that. (Witness reviews document.)

17 I did not address it in my response back
18 to Mr. Conley on December 23rd, 2008.

19 Q. So it is it your testimony, Mr. Guernsey, that
20 the restrictive covenant was unnecessary?

21 A. It was not necessary for my response back to
22 Mr. Conley back in 2008.

23 Q. Was it --

24 A. It --

25 Q. Go ahead.

1 A. And I think it was something that was asked
2 for by staff, obviously, in 2011 and they offered it and
3 we accepted it.

4 Q. Is it your understanding that the restrictive
5 covenant and your determination of land use in December
6 of 2008 are the same?

7 A. Is that one of these exhibits that we've
8 already had, the covenant?

9 Q. Not yet.
10 I'm asking you if it was the same, if it
11 was the same -- In other words, is the covenant and
12 your determination of religious assembly based upon the
13 anticipated use of the property, is it one in the same?

14 MS. EDWARDS: Objection, form.

15 A. Yes, generally.

16 Q. (By Mr. Taube) What's not the same?

17 A. I would have to go back, you know, five --

18 Two or three years ago versus, you know,
19 five years ago is a big difference in time, and I guess
20 I would like the opportunity to see what the covenant is
21 and see what Carl had offered to look at.

22 Q. Sure.

23 (Exhibit No. 22 marked.)

24 Q. (By Mr. Taube) Mr. Guernsey, I'm going to
25 hand you what's been marked for identification as

1 Q. So it's your position and your testimony that
2 a large-scale music event could be religious assembly so
3 long as it has some, what, religious purpose, religious
4 affiliation? What are the conditions upon which it
5 might comply?

6 A. Well, you know, I could -- there could be an
7 event that would occur on the property where you had
8 some large choir that was signing Christmas carols or
9 something along that line where it would be a larger
10 event where the congregation would show up, others might
11 be invited to join the congregation, whether they're
12 members of the church or not.

13 Q. How about a secular rock concert for the
14 purpose of raising money for the church; is that a
15 religious assembly use?

16 A. It possibly could be. I'm not sure of the --
17 I've never gone to a, I guess a religious rock event,
18 but there could be some -- something that would be a
19 fundraiser for a charity that the church works on or the
20 youth group could be certainly having some event along
21 that line.

22 Q. Is it your testimony, Mr. Guernsey, that so
23 long as the event that occurs at this outdoor
24 amphitheater is somehow related to financing or funding
25 for the church, that it falls under religious assembly?

1 So just as an example: How about a car bashing, okay,
2 or a car race that raises money for the church; is that
3 a religious assembly use, sir?

4 A. I guess I would -- well, I would need more
5 information. I would go back to what the definition is
6 of religious assembly use. Is it still tax exempt?
7 It's not one of those things that's listed as a use
8 that's affiliated with a primary or secondary
9 educational facility, it's a daycare that is connected,
10 tied to the church in some manner. I guess that there
11 could be some charity event, somebody donates a vehicle
12 to the church, like in public radio, and I don't know
13 how that would interact. I know churches sometimes have
14 raffles for items, if it was a raffle thing that you get
15 a take a whack at a car to raise money for the church or
16 for a charity or something.

17 Q. Let's say the band AC/DC decided to get
18 together and put on a promotional fundraising event for
19 the Promiseland West Church. Okay? Would that -- and
20 sell tickets to the public. Would that event be covered
21 under religious assembly?

22 A. I think I'd still go back to the definition,
23 and if you said it was the Gatlin Brothers singing
24 gospel tunes versus AC/DC, I think it gets hazing
25 through that whole thing.

1 Q. So does it matter what the content of the
2 music is as opposed to the performance or the people
3 that are doing it?

4 A. I think it has to do with, really, what is the
5 religious activity or the benefit to that religious
6 assembly use that's really there.

7 Q. Who makes that decision? You?

8 A. Partly me, partly the Travis County Appraisal
9 District.

10 Q. How does the Travis County Appraisal District
11 determine whether the Gatlin Brothers are performing a
12 religious concert or not?

13 MS. EDWARDS: Objection, form.

14 A. As I said, if they are still deemed to be a
15 tax exempt and sanctioned by the Appraisal District as a
16 tax exempt entity, the definition still brings me back
17 to being a religious assembly use.

18 Q. (By Mr. Taube) So it's your testimony, sir,
19 that as long as the Promiseland West Church maintains
20 its tax-exempt status, regardless of the nature of
21 events that occur in that outdoor amphitheater, so long
22 as it has some relationship to the church, like a
23 fundraising event, it is permitted. Is that fair?

24 A. Generally, yes.

25 Q. Mr. Guernsey, take a look, if you would,

1 please, at Exhibit No. 11, and specifically at Page
2 No. 2.

3 A. (Witness complies.)

4 Q. There is a listing of things that are -- well,
5 it's a carryover. It says, "The buildings and outdoor
6 amphitheater located or to be located on the Property
7 will be subject to the following limitations." Then it
8 goes "A. Religious Assembly Use will be permitted (as
9 defined in the Austin Land Development Code), including
10 such uses as: Worship services; musical or theatrical
11 performances; weddings; and funerals."

12 Have I read that correctly?

13 A. Yes.

14 Q. So music and theatrical performances under
15 this restrictive covenant, regardless of whether it is
16 of a secular or religious nature, would come under
17 religious assembly use?

18 A. There's a tie under part A back to the
19 religious assembly use. If it had no affiliation with a
20 religious assembly use and it was just simply bands
21 every weekend charging a cover charge to get in, similar
22 to The Backyard, then it probably would not be a
23 religious assembly use any longer.

24 Q. Mr. Guernsey, if you look at C, it says,
25 "Religious Assembly Use may include occasional

1 charitable events (including concerts and performances)
2 for the benefit of an individual or family in need or
3 for a charitable organization or charitable cause."

4 I read that correctly?

5 A. Yes.

6 Q. Who determines what "occasional" is?

7 A. I think that goes back to looking at, again,
8 the definition that I had to work with. You know, you
9 spoke several times of the frequency of that. They may
10 be putting their tax exemption in jeopardy if it -- if
11 it was something that actually started, no longer doing
12 a worship service, they were actually putting on
13 performances in lieu of doing worship in that facility,
14 that would be a -- raise a little concern of whether or
15 not they're really doing a religious assembly use.

16 MR. TAUBE: Objection, nonresponsive.

17 Q. (By Mr. Taube) My question, Mr. Guernsey, is,
18 who determines what "occasional" is for the purpose of
19 enforcing this Restrictive Covenant?

20 A. It would probably end up being the Code
21 Compliance Department.

22 Q. So does that include you?

23 A. They may consult me, but the Code Compliance
24 Department is the enforcement arm of the City of Austin.
25 And there may be also questions, although I don't know

1 how that would work, by the Appraisal District.

2 Q. How's it being monitored?

3 MS. EDWARDS: Excuse me. Let's go off
4 the record for just a minute.

5 MR. TAUBE: Sure.

6 (Discussion off the record.)

7 Q. (By Mr. Taube) Who's monitoring whether it's
8 occasional or not? Who gets to monitor that? Is it
9 Code Enforcement?

10 A. Code Enforcement, if they receive a complaint,
11 would go out and investigate.

12 Q. But not otherwise?

13 A. But not otherwise unless there's some other
14 permit requirement in the city that may have a
15 limitation, such as an outdoor music venue permit, which
16 is an annual permit. Then APD may come out and enforce.

17 Q. So if I'm a neighbor, Mr. Guernsey, and I say,
18 you know what, more than once a month is more than
19 occasional, and this happened twice a month, and I make
20 a complaint to Code Enforcement, how does Code
21 Enforcement determine whether or not they're complying
22 with the restrictive covenant or not?

23 MS. EDWARDS: Objection, form.

24 A. I'm not sure what -- how they would go out and
25 enforce that. Normally, we try to work with all

1 property owners to make sure that it's not an issue.

2 Q. (By Mr. Taube) And to the extent that a Code
3 Enforcement officer determined that it violated the
4 restrictive covenant, what would they do?

5 A. I think their typical process, and I'm not
6 intimately involved, but that they usually give a
7 warning to the property owner, and then they may follow
8 up in taking an action, like brining them into municipal
9 court.

10 Q. Like what, red tag? What is the action?

11 A. A notice of violation, I think is what they
12 use.

13 Q. Mr. Guernsey, if you look at G, Exhibit
14 No. 11, G on the second page, it says --

15 A. On the second page?

16 Q. Yes, sir.

17 A. Okay.

18 Q. It says, "The restrictions in this Article I
19 are imposed as conditions to Site Plan No. 2011-0185C
20 and apply to the extent that an outdoor amphitheater
21 remains part of the principal religious assembly use."

22 You see that?

23 A. Yes.

24 Q. So if the site plan expires, does this
25 restrictive covenant go away as well?

1 A. Well, a covenant would have to be terminated,
2 and my guess is there is a section in here that speaks
3 to the termination of this. So even if the --

4 Q. I didn't see any.

5 A. Oh, I'm sorry. On page -- usually it's at the
6 end.

7 Q. Yeah, there's something in D that says this
8 may be modified, amended or terminated only by joint
9 action of both the director and owners of the property.
10 So, in other words, unless the owners of the property
11 agree that this restrictive covenant goes away, it
12 doesn't, right?

13 A. Right. These conditions would remain on the
14 property. And a restrictive covenant by its nature is
15 generally being something more restrictive, not less
16 restrictive.

17 Q. Even though it says that these restrictions
18 are imposed to the extent that an outdoor amphitheater
19 remains part of the. Excuse me -- that are conditions
20 to Site Plan No. 2011-0185C, correct?

21 A. Correct.

22 Q. Mr. Guernsey, I had asked you previously
23 whether or not you were aware of whether City staff was
24 aware of the public statements made by Promiseland West
25 Church in connection with the intended use of the

1 property in connection with its consideration of the
2 site plan that was approved. Do you remember that?

3 A. Yes.

4 Q. Take a look, if you would, please, at Exhibit
5 No. 17.

6 A. Seventeen.

7 Q. And specifically, Mr. Guernsey, at Page 2714.

8 A. (Witness complies.) Okay.

9 Q. Under U-1.

10 A. U-1, okay.

11 Q. And U-2.

12 A. (Witness complies.) Okay.

13 Q. It says, "The engineer's response letter
14 states that the amphitheater is intended for religious
15 assembly use only, however, the owner was quoted saying
16 many non-religious events will take place in the
17 amphitheater, including 'graduation ceremonies,
18 recitals, ballets, family movie nights, jazz concerts,
19 and other events.'"

20 Did I read that correctly?

21 A. Yes. And it also says "Austin Chronicle
22 article."

23 Q. It says the Austin Chronicle quotes the owner
24 as saying. Quotes the owner as saying. So is it your
25 understanding that the City looked into the veracity of

1 the owner's statements and limitations on the use of
2 this and ignored what was reflected in Ms. Graham's
3 comments to Site Plan Application 0185C?

4 A. Well, these are reiterations of comments from
5 the site plan that expired, the previous site plan.
6 That's what it states at the top here. So I think she
7 was bringing those comments to light in this
8 application. So I guess I'm not quite understanding the
9 question.

10 Q. The question is, is it your understanding that
11 the City ignored the public statements of the, quote,
12 "owner" that specified that the outdoor amphitheater
13 would be used for "many non-religious events, including
14 graduation ceremonies, recitals, ballets, family movie
15 nights, jazz concerts, and other events"?

16 A. I don't think it was ignored because it's
17 stated actually in this document and was brought to the
18 property owner, the applicant's agent's attention.

19 Q. And the response to bringing it to that
20 attention was the restrictive covenant?

21 A. I think it's the approval of the site plan
22 with its conditions and restrictive covenant.

23 Q. Which includes a restrictive covenant that
24 says, occasional charitable events, concerts and
25 performances, which by your definition could include an

1 AC/DC concert for the benefit of the church, are
2 permitted; is that right?

3 A. That's possible.

4 MR. TAUBE: I think I'm out of time for
5 today. I'm going to reserve the right to request
6 additional time from this witness in the future.

7 MS. EDWARDS: Is he out of time, Pamela?

8 THE REPORTER: I show four more minutes.

9 MS. EDWARDS: Are you going to reserve
10 that --

11 MR. TAUBE: I'll reserve my right for the
12 four minutes and my right for additional time based upon
13 the responses or non-responses that I've received.

14 MS. EDWARDS: Okay. Are you passing the
15 witness?

16 MR. TAUBE: I am for today.

17 MS. EDWARDS: I only have a few questions
18 for Mr. Guernsey.

19 FURTHER EXAMINATION

20 BY MS. EDWARDS:

21 Q. Mr. Guernsey, is there a provision in the Land
22 Development Code that gives the director, in that case
23 you, the discretion to make use determinations?

24 A. Yes.

25 Q. Can you tell us what provision that is?

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CAUSE NO. D-1-GN-12-000878

HILL COUNTRY ESTATES § IN THE DISTRICT COURT OF
HOMEOWNERS ASSOCIATION, §
AND COVERED BRIDGE §
PROPERTY OWNERS §
ASSOCIATION, INC., §

Plaintiffs, § TRAVIS COUNTY, TEXAS

VS. §

GREG GUERNSEY, THE CITY OF §
AUSTIN, §

Defendants. § 250TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

DEPOSITION OF GREG GUERNSEY

February 20, 2013

I, PAMELA NICHOLS, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, GREG GUERNSEY, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney

1 for the witness for examination, signature and return to
2 U.S. Legal Support, 8200 I.H. 10 West, Suite 810,
3 Fountainhead One, San Antonio, Texas, 78230, by
4 _____;

5 That the amount of time used by each party at the
6 deposition is as follows:

7 Mr. Eric J. Taube, 06 HOURS:00 MINUTE(S)

8 Ms. Chris Edwards - 00 HOURS:17 MINUTE(S)

9 That pursuant to information given to the
10 deposition officer at the time said testimony was taken,
11 the following includes counsel for all parties of
12 record:

13 Mr. Eric J. Taube, Attorney for Plaintiffs

14 Ms. Chris Edwards, Attorney for Defendants

15 I further certify that I am neither counsel
16 for, nor related to, nor employed by any of the parties
17 or attorneys in the action in which this proceeding was
18 taken, and further that I am not financially or
19 otherwise interested in the outcome of the action.

20 Further certification requirements pursuant to Rule
21 203 of TRCP will be certified to after they have
22 occurred.

23
24
25

GREG GUERNSEY

2/20/2013

262

1 Certified to by me this 27th of February, 2013.

2
3 *Pamela Nichols*



4
5 PAMELA NICHOLS, Texas CSR 1475

6 Expiration Date: 12/31/2014

7 U.S. Legal Support

8 8200 I.H. 10 West, Suite 810

9 San Antonio, Texas 78230

10 (210) 734-7127

11 Firm Registration No. 341



EXHIBIT 12-1

PLANNING COMMISSION
CODES AND ORDINANCES SUBCOMMITTEE MINUTES **REGULAR MEETING**
Tuesday, September 18, 2012

The Planning Commission Codes and Ordinances Subcommittee convened in a regular meeting on Tuesday, September 18, 2012, at 301 W. 2nd Street, City Hall, Room #1027, in Austin, Texas.

Commissioner Anderson called the meeting to order at 6:03 p.m.

Subcommittee Members in Attendance:

Danette Chimenti - Chair
Dave Anderson
Stephen Oliver
Jean Stevens
Myron Smith

City Staff in Attendance:

Greg Dutton, Senior Planner, Planning and Development Review
Alyson McGee, Senior Planner, Planning and Development Review
Carol Haywood, Manager – Comprehensive Planning, Planning and Development Review
Erica Leak, Planner Principal, Planning and Development Review
John McDonald, Planner Principal, Planning and Development Review
Greg Guernsey, Director – Planning and Development Review

Others in Attendance:

Kelly Wright, Coats/Rose
Amanda Morrow, Armbrust & Brown
Ron Thrower, Thrower Design
Annie Armbrust, Real Estate Council of Austin
Emily Chenevert, Austin Board of Realtors
Jan Long, EROC Contact Team/EROC Working Group
Nuria Zaragoza, CANPAC

1. CITIZEN COMMUNICATION: GENERAL

- a. None

2. APPROVAL OF MINUTES

- a. None

3. APPOINT SUBCOMMITTEE CHAIR

- a. Commissioner Chimenti was nominated by Commissioner Stevens as the Chair and appointed without objection. Vote: 5-0.

4. POTENTIAL CODE AMENDMENTS: Proposed for Initiation and Discussion

Potential amendments to the code are offered for discussion and possible recommendation for initiation. If initiated, Staff will research the proposal and report back to the subcommittee.

- a. **Subdivision** – A staff presentation on potential amendments to the subdivision code to promote neighborhood connectivity and improve accessibility. City Staff: Carol Haywood, Planning and Development Review Department, 974-7685
 [REDACTED] (Discussion and/or Possible Action)

Carol Haywood explained that part of a Community Transformation grant that was accepted by City Council is an examination of the city's existing subdivision code. The Center for Transportation Research is currently examining said code, and will have a report done at the end of September. Ms. Haywood explained that any revisions to the existing subdivision code would be influenced by the Imagine Austin comprehensive plan's themes of "compact and connected" and by the priority programs in Imagine Austin, as they relate to health. Complete streets would also likely be a part of any new subdivision code revision. The commissioners agreed that the revision was a good idea, but asked that this item be brought back at the next (October) subcommittee meeting, with a more specific outline of possible grant-related deadlines and requirements, and how the revision of the subdivision code would dovetail with the larger land development code rewrite coming in the near future.

No action was taken.

- b. **Rainey Street Subdistrict Density and Height Regulations** – Consider an ordinance amending Title 25 of the City Code to modify Rainey Street Subdistrict density and height regulations. City Staff: Alyson McGee, Planning and Development Review Department, 974-7801 [REDACTED] (Discussion and/or Possible Action)

Alyson McGee explained that existing Rainey Street subdistrict regulations provide incentives for relocation of historically significant structures inside the subdistrict; the proposed code amendment would allow the same structures to be relocated outside the subdistrict in order to increase the chances that redevelopment projects will pursue relocate them (instead of demolishing them). The proposed code amendment would allow a development to qualify for five points for every historically significant structure moved off-site to a site deemed appropriate by the Historic Landmark Commission.

A motion was made to initiate the code amendment by Commissioner Anderson, seconded by Commissioner Stevens, on a 5-0 vote.

- c. **Land Uses in DMU Zoning** – Consider an ordinance amending Title 25 of the City Code to allow Electronic Testing and Electronic Prototype Assembly within the DMU zoning district. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [REDACTED] (Discussion and/or Possible Action)

Greg Dutton explained that this code amendment had mistakenly been placed on the agenda; this code amendment had already been initiated and is in process.

No action was taken.

- d. **Public Assembly Permit** – Consider an ordinance amending Title 25 of the City Code to allow schools, churches, and other entities with residential zoning to conduct public assembly events. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [REDACTED] (Discussion and/or Possible Action)

Greg Dutton explained that the city's current code does not allow institutions such as churches and schools, that have certain residential zoning, to apply for a temporary use permit that would be needed to conduct temporary outdoor events, such as fund-raising events or festivals. The proposed code amendment would allow staff to explore how to best address the issue.

A motion was made to initiate the code amendment by Commissioner Stevens, seconded by Commissioner Anderson, on a 5-0 vote.

- e. **Waterfront Overlay Boundary** – Consider an ordinance amending Title 25 of the City Code to modify the boundary of the Waterfront Overlay District – Auditorium Shores and Butler Shores Subdistricts. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [REDACTED] (Discussion and/or Possible Action)

Greg Dutton explained that a citizen with property currently in the Auditorium Shores subdistrict had request that the Waterfront Overlay boundaries be amended so that their property would fall into the Butler Shores subdistrict. They made this request so that the uses allowed on the property could be expanded to include uses currently prohibited in the Auditorium Shores subdistrict. Commissioners requested that the Waterfront Planning Advisory Board take specific action or make a clear motion on this item before coming back to the Codes and Ordinances Subcommittee for initiation.

A motion was made to send the proposed code amendment to the Waterfront Planning Advisory Board by Commissioner Oliver, seconded by Commissioner Stevens, on a 5-0 vote.

- f. **Unfinished Space Exemption** – Consider an ordinance amending Title 25 of the City Code to describe how unfinished space is calculated and exempted from gross floor area calculations. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [REDACTED] (Discussion and/or Possible Action)

Ms. Zaragoza explained that she felt that unfinished attic spaces were being used as bedrooms or habitable spaces, which has been a problem around the University. Her request is to examine how unfinished spaces are exempted from gross floor area calculations (specifically attics) and see if there is a better way to define what is exempted.

A motion was made to initiate the code amendment by Commissioner Stevens, seconded by Commissioner Oliver, on a 5-0 vote.

- g. **McMansion** – Consider an ordinance amending Title 25 of the City Code relating to Subchapter F: Residential Design and Compatibility Standards (McMansion) regulations within the City's zoning jurisdiction. City Staff: John McDonald, Planning and

Development Review Department, 974-2728, [REDACTED]
(Discussion and/or Possible Action)

John McDonald requested a postponement of this item to allow staff more time to research the topic. Commissioner Chimenti explained that while tweaks to the McMansion ordinance could be explored, there was no desire to revisit the topic in its entirety. Commissioners suggested working with AIA and RDCC in any discussions.

No action was taken.

- h. **Definition of Bedroom** – Consider an ordinance amending Title 25 of the City Code clarifying the definition of bedroom in City Code. City Staff: John McDonald, Planning and Development Review Department, 974-2728, [REDACTED]
(Discussion and/or Possible Action)

Ms. Zaragoza explained that she felt that rooms and spaces which are not meant to be used as bedrooms (such as a study or game room) are ultimately being used as bedrooms, violating existing city code, and has been a problem around the University. Her request is to examine how a bedroom is defined in the city code and see if there is a better or different way to define them.

A motion was made to initiate the code amendment by Commissioner Anderson, seconded by Commissioner Smith, on a 5-0 vote.

5. REGULAR AGENDA

- a. **Briefing on East Riverside Corridor Regulating Plan** - Consider an ordinance amending Title 25 of the City Code to implement the East Riverside Corridor Regulating Plan. City Staff: Erica Leak, Planning and Development Review Department, 974-2856, [REDACTED]
(Discussion and/or Possible Action)

Erica Leak presented an overview of the East Riverside Master Plan and Regulating Plan, the latter of which is scheduled for adoption later this year. Ms. Leak explained that the regulating plan will implement the Riverside Corridor Master Plan, with an emphasis on urban form and proposals for a revised compatibility standard for properties in the study area. A new “ERC” zoning district will be applied to properties inside the ER planning area, and a new development bonus is also being proposed by the regulating plan. Ms. Leak also explained that the ER Master Plan and Regulating Plan fit well with the recently adopted Imagine Austin Comprehensive Plan, which calls for East Riverside to be an activity corridor. Ms. Leak indicated that she would return at the October subcommittee meeting to take any other questions.

No action was taken.

- b. **Old Enfield** – Consider an ordinance Conduct a public hearing and consider an ordinance amending City Code Title 25 to designate the Planning Commission as the Land Use Commission for the Old Enfield neighborhood planning area. City Staff: Greg Dutton,

Planning and Development Review Department, 974-3509, (Discussion and/or Possible Action)

Greg Guernsey explained that this code amendment addresses the desire for the Old Enfield neighborhood planning area to be under the purview of the Planning Commission (as opposed to Zoning and Platting). Because the Old Enfield neighborhood planning area does not have a neighborhood plan it would normally go to ZAP for zoning and land use-related matters. However, Old Enfield is surrounded by areas that do have complete neighborhood plans (Old West Austin, Central West Austin Combined, Central Austin Combined, and Downtown), and being under the same development pressures and dealing with the same issues as surrounding areas, it was deemed appropriate to designate PC as the reviewing body for Old Enfield.

A motion was made to recommend the proposed code amendment to the full Planning Commission by Commissioner Oliver, seconded by Commissioner Stevens, on a 4-0 vote (Commissioner Anderson absent).

- c. **Special Exceptions** - Consider an ordinance amending Chapter 25-2-476, relating to the granting of special exceptions. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, (Discussion and/or Possible Action)

Greg Guernsey explained that this code amendment tweaks an existing ordinance that was adopted in 2011 to allow the Board of Adjustment to grant special exceptions. The 2011 ordinance allows residents with long-standing code violations, that pose no threat to health or safety, to apply for a special exception with the Board of Adjustment so that Code Compliance can concentrate on more egregious violations. The tweak that the current code amendment makes is changing language stating that the BOA “may” grant a special exception to it “shall” grant said exception, if all the criteria are met.

A motion was made to recommend the proposed code amendment to the full Planning Commission by Commissioner Stevens, seconded by Commissioner Smith, on a 4-0 vote (Commissioner Anderson absent).

6. OTHER BUSINESS

- a. **Update on current code amendments and process** - City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, (Discussion and/or Possible Action)

Greg Dutton reviewed the current code amendment process and went over a list of code amendment cases that are in process. The Commissioners requested that a simple update on the status of ongoing cases be presented at future meetings.

7. FUTURE AGENDA ITEMS

- a. None

ADJOURNMENT

Commissioner Chimenti adjourned the meeting without objection at 9:03 p.m.

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least 4 days before the meeting date. Please call Greg Dutton at Planning and Development Review Department, at 512-974-3509, for additional information; TTY users route through Relay Texas at 711.

For more information on the Planning Commission Codes and Ordinances Subcommittee, please contact Greg Dutton at (512) 974-3509 or a [REDACTED]

EXHIBIT 12-2

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

Planning Commission – A public hearing at Planning Commission has been set for January 22, 2013.

Council Action

City Council – A public hearing at City Council has been set for February 28, 2013.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: g

ORDINANCE NO. _____

C1/2

1 AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
2 RELATING TO TEMPORARY USES.
3

4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
5

6 PART 1. City Code Section 25-2-921 (*Temporary Uses Described*) is amended to reflect
7 the following:

8 (A) The following may be permitted by the building official as temporary uses under
9 this division:

10 (1) model homes or apartments and related real estate services, if the use is located
11 within the residential development to which the use pertains;

12 (2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200
13 feet from a dwelling and located in a CS or less restrictive zoning district;

14 (3) an outdoor art or craft show or exhibit, if the use is located in an LR or less
15 restrictive zoning district;

16 (4) Christmas tree sales;

17 (5) an on-site construction field office, if the use is located in a portable structure
18 and conducted for not more than 6 months;

19 (6) seasonal retail sale of agricultural or horticultural products, if the use is located
20 at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;

21 (7) seasonal day care, if the use is conducted for not more than eight hours a day
22 and not more than 30 days a year; and

23 (8) temporary day care, if the use is conducted for not more than eight hours a day
24 and not more than 12 hours a week.

25 (B) A sales office for a new subdivision may be permitted as a temporary use under
26 this division if the sales office is located within the subdivision and at least 200 feet from
27 existing dwellings outside the subdivision.

28 (1) A sales office for a new subdivision may not be operated after:

1 (a) the expiration of four years from the date the first construction permit issued
2 in the subdivision; or

3 (b) the date by which 95 percent of the lots are sold.

4 (2) The board of adjustment may grant an extension of the deadlines described in
5 this subsection.

6 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a
7 festival, benefit, fund raising event, or similar use that typically attracts a mass audience may
8 be permitted as a temporary use under this division if:

9 (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less
10 restrictive zoning district, or the use is located on a property whose principal developed use
11 is religious assembly, private primary educational facilities, private secondary educational
12 facilities, public primary educational facilities, public secondary educational facilities, or
13 public community recreation;

14 (2) for a gathering of more than 50 persons, the use is located in an LO or less
15 restrictive zoning district, or the use is located on a property whose principal developed use
16 is religious assembly, private primary educational facilities, private secondary educational
17 facilities, public primary educational facilities, public secondary educational facilities, or
18 public community recreation;

19 (3) for an exhibit, the use is located in a GR or less restrictive zoning district.


20 (D) A single dwelling located in a mobile structure on a construction site may be
21 permitted as a temporary use under this division if the building official determines that the
22 dwelling is required to provide security against nighttime theft or vandalism. The building
23 official may allow the use for a period of up to 6 months and, if requested by the applicant,
24 may extend that period for an additional 6 months. An applicant may appeal to the board of
25 adjustment a denial of the use by the building official.

26 (E) An outdoor special sale, including a swap meet, flea market, parking lot sale, or
27 similar activity may be permitted as a temporary use under this division if the use is located
28 in a commercial or industrial zoning district. An outdoor special sale may be conducted on
29 not more than three days in the same week and not more than five days in the same month.

30 (F) Within the Central Business District (CBD) or Downtown Mixed Use (DMU)
31 zoning districts, retail services may be permitted as a temporary use in accordance with the
32 requirements of this subsection.

33 (1) The retail use must:

1 (a) be located within an enclosed fire area, as defined by the Building Code, that
2 does not require structural changes to accommodate the use; and

3 (b) have an approved certificate of occupancy or temporary certificate of
4 occupancy. 

5 (2) The retail use may not exceed 12,000 square feet in area unless an approved
6 sprinkler system has been installed in accordance with the Fire Code;

7 (3) The following uses and activities may not be permitted as a temporary retail use
8 under this subsection:

9 (a) personal services;

10 (b) food preparation or the sale or consumption of alcoholic beverages;

11 (c) a portable toilet serving the retail use, whether located inside or outside of the
12 use; or

13 (d) storage of hazardous materials as defined by the Fire Code.

14 (4) A permit for a temporary retail use under this subsection may be issued for up to
15 45 days and renewed once, for a total operating period not to exceed 90 days.

16 (G) The building official may permit other temporary uses that are similar to those
17 described in this section.

18 *Source: Section 13-2-321; Ord. 990225-70; Ord. 031211-11; Ord. 20111103-075.*

19
20
21 **PART 3.** This ordinance takes effect on _____, 2012.
22

1 PASSED AND APPROVED

2
3
4
5 _____, 2012

§
§
§

C1/5
Lee Leffingwell
Mayor

6
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8
9
10 APPROVED: _____
11 Karen M. Kennard
12 City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk



City of Austin

P.O. Box 1088, Austin, TX 78767
www.cityofaustin.org/housing

Neighborhood Housing and Community Development Department 1000 East 11th Street Austin Texas 78702

DATE: January 9, 2013

TO: Greg Dutton,
Planning Development Review Department

FROM: Javier V. Delgado, Project Coordinator, AHFC

RE: AIS Determination for AN ORDINANCE AMENDING SECTION 25-2-921 OF
THE CITY CODE RELATING TO TEMPORARY USES.

Mr. Dutton:

Upon review of the proposed ordinance regarding Public Assembly as a temporary uses, Neighborhood Housing & Community Development has determined NO IMPACT on affordable housing of affordable housing production. An Affordable Impact Statement review is not required. Please contact me if you have any questions.

Regards,

Javier V. Delgado
Project Coordinator

City of Austin- Neighborhood Housing & Community Development

EDUCATIONAL IMPACT STATEMENT

CITY OF AUSTIN CODE AMENDMENT

Austin Independent
School District



Prepared for the City of Austin



CODE AMENDMENT NAME: Public Assembly

CASE #: C20-2012-016

C7/7

☐ POTENTIAL IMPACT ON SCHOOL(S)

☒ NO IMPACT ON SCHOOL(S)

CODE AMENDMENT SUMMARY

Amend Section 25-2-921 (C) (1) and (2) (*Temporary Uses Described*) of the Austin City Code. This amendment would allow for gatherings in certain zoning districts if the temporary use is located on a property whose principal developed use is religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities.

IMPACT ON SCHOOLS

The proposed code amendment change will not have an impact on AISD schools.

Date Prepared: 01/09/2013

Director's Signature:

Paul Turner

I01/443

101/444

C3/2

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
 2 RELATING TO TEMPORARY USES.

3
 4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

5
 6 **PART 1.** Subsection (C) of City Code Section 25-2-921 (*Temporary Uses Described*) is
 7 amended as follows:

8 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit,
 9 including a festival, benefit, fund raising event, or similar use that typically attracts a
 10 mass audience may be permitted as a temporary use under this division if:

11 (1) the use is located on a property whose principal developed use is
 12 religious assembly, private primary educational facilities, private secondary
 13 educational facilities, public primary educational facilities, or public secondary
 14 educational facilities or community recreation (public), and the number of
 15 events does not exceed four per year per property;

16 (2) [(4)] for a gathering of not more than 50 persons, the use is located in an SF-
 17 4 or less restrictive zoning district;

18 (3) [(2)] for a gathering of more than 50 persons, the use is located in an LO or
 19 less restrictive zoning district; or

20 (4) [(3)] for an exhibit, the use is located in a GR or less restrictive zoning
 21 district.

22 **PART 2.** This ordinance takes effect on _____, 2013.

23 **PASSED AND APPROVED**

24
 25 §
 26 §
 27 _____, 2013 § _____
 28 Lee Leffingwell
 29 Mayor

30
 31
 32 **APPROVED:** _____
 33 Karen M. Kennard
 34 City Attorney

ATTEST: _____
 Janette Goodall
 City Clerk

EXHIBIT 12-4

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

Voted to send this item to full Planning Commission on February 19, 2013, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission – A public hearing was held at Planning Commission on January 22, 2013, with a motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

A public hearing was held at Planning Commission on March 26, 2013, with a motion to recommend the item to City Council. Vote: 8-0.

Council Action

City Council – A public hearing at City Council has been set for March 21, 2013.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

EXHIBIT 12-5

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

Council Action

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

EXHIBIT 13-1

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
2 RELATING TO TEMPORARY USES.

3
4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

5
6 PART 1. Subsection (C) of City Code Section 25-2-921 (*Temporary Uses Described*) is
7 amended as follows:

8 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit,
9 including a festival, benefit, fund raising event, or similar use that typically
10 attracts a mass audience may be permitted as a temporary use under this
11 division if:

- 12 (1) the use is located on a property with a principal developed use of
13 religious assembly, private primary educational facilities, private
14 secondary educational facilities, public primary educational facilities, or
15 public secondary educational facilities or community recreation (public)
16 and the number of events per property does not exceed four per year, at
17 no more than two days per event;
- 18 (2) ~~[(1)]~~ for a gathering of not more than 50 persons, the use is located in an SF-
19 4 or less restrictive zoning district;
- 20 (3) ~~[(2)]~~ for a gathering of more than 50 persons, the use is located in an LO or
21 less restrictive zoning district; or
- 22 (4) ~~[(3)]~~ for an exhibit, the use is located in a GR or less restrictive zoning
23 district.

24 PART 2. This ordinance takes effect on _____, 2013.

1 **PASSED AND APPROVED**

2
3 §
4 §
5 §

6 _____, 2013

7 Lee Leffingwell
8 Mayor

9
10 **APPROVED:**

11 Karen M. Kennard
12 City Attorney

ATTEST:

Janette Goodall
City Clerk

EXHIBIT 13-2

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
RELATING TO TEMPORARY USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection (C) of City Code Section 25-2-921 (Temporary Uses Described) is amended as follows:

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

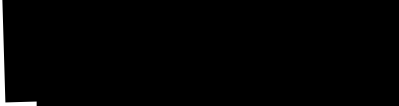
(1) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public) and the number of events per property does not exceed four per year, at no more than two days per event;

(2) ~~[(1)]~~ for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(3) ~~[(2)]~~ for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(4) ~~[(3)]~~ for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services.



PART 2. This ordinance takes effect on _____, 2013.

PASSED AND APPROVED

_____, 2013

§
§
§

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

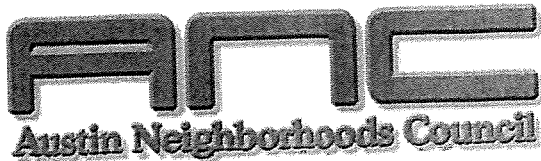


EXHIBIT 14

AUSTIN NEIGHBORHOODS COUNCIL (ANC) EXECUTIVE COMMITTEE RESOLUTION REQUESTING A PUBLIC HEARING OR VETTING FOR SUBSECTION D, RELIGIOUS SERVICE, BY THE PLANNING COMMISSION'S SUBCOMMITTEE, CODES AND ORDINANCES, AND THE CITY COUNCIL ON THE ORDINANCE RELATING TO TEMPORARY USES:

WHEREAS, the Austin Zoning Code defines Religious Assembly as "regular organized religious worship or religious education in a permanent or temporary building;

WHEREAS, Section 25-2-921 (C) of the Austin Zoning Code prohibits outdoor public, patriotic, historic and religious assembly in zoning districts LA, RR, SF-1, SF-2, and SF-3;

WHEREAS, Section 25-2-921(C) authorizes the building official to issue temporary use permits for outdoor public, patriotic, historic and religious assembly (including, festivals, benefits, and fund raising events) in SF-4 and less restrictive zoning districts;

WHEREAS, in September 2012, City Staff presented a request to the Codes and Ordinances Committee of the Planning Commission to initiate an amendment to Section 25-2-921(C) to "allow institutions such as churches and schools, that have certain residential zoning, to apply for a temporary use permit that would be needed to conduct temporary outdoor events, such as fund-raising events or festivals;"

WHEREAS, the Planning Commission recommended an ordinance amending Section 25-2-921(C) that would authorize the building official to issue temporary use permits for outdoor public, patriotic, historic and religious assembly on property with a principal use of religious assembly, primary and secondary educational facilities and community recreation (public), including property in LA, RR, SF-1, SF-2, and SF-3 zoning districts;

WHEREAS, the Planning Commission recommended that the number of temporary use permits that could be issued per property with a principal use of religious assembly, education and community recreation, should be limited to a set number of days per year;

WHEREAS, since the City Council approved the proposed ordinance on first reading on April 25, 2013, City Staff has inserted new subsection D into the proposed ordinance that would authorize "religious services" to occur outdoors in any zoning district without any sort of permit from the City and without any limitations;

WHEREAS, the term “religious services” is undefined by City Code;

WHEREAS, the new subsection D constitutes a significant change to the proposed ordinance and there have been no public hearings on the new subsection D;

WHEREAS, distinguishing a “religious service” from a “non-religious service” would impose an impossible burden on Code Enforcement; and

WHEREAS, the new subsection D in the proposed ordinance will adversely affect every neighborhood in the City of Austin;

NOW THEREFORE, BE IT RESOLVED,

The Austin Neighborhoods Council Executive Committee has great concerns and asks the Austin City Council to call a public hearing regarding subsection D and to hold a Public Hearing, with at least a 30 day notice, before action is taken on the Austin zoning code regarding the Temporary Use Permits.

Presented to the ANC Executive Committee, November 13, 2013

Adopted by the ANC Executive Committee, November 13, 2013

Sponsor Contact: Mike Connor, Covered Bridge Neighborhood Representative

EXHIBIT 15



MEMORANDUM

To: Mayor and Council

From: Gregory I. Guernsey, AICP, Director
Planning and Development Review Department

Date: November 18, 2013

Subject: Item 72 – Code Amendment - Temporary Use Permits for Public Assembly
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

- (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*
- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
 - (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
 - (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager
Carl Smart, Director Code Compliance Department
Chief Rhoda Mae Kerr, Austin Fire Department
Jerry Rusthoven, Division Manager, Planning and Development Review Department

101/457

REVISED 04/10		TICKET NUMBER	
Austin Citation <input type="checkbox"/> TR <input type="checkbox"/> CM		13 661515	
<input checked="" type="checkbox"/> DL# <input type="checkbox"/> COM DL# <input type="checkbox"/> LD#		STATE	DL TYPE
03914196		TX	A B C M
LAST NAME		FIRST NAME	MIDDLE INITIAL
Ruiz		Albert	
RESIDENCE ADDRESS			
1111 Montopolis Dr.			
CITY	STATE	ZIP CODE	RES PHONE (AC)
Austin	TX	78741	
DATE OF BIRTH	White	Black	Hispanic
3-31-46	Native Amer.	Middle Eastern	Other
SEX	HEIGHT	EYES	
M	5'6"	BRO	
EMPLOYER OR SCHOOL		BUSINESS ADDRESS	
BUSINESS PHONE (AC)			
OCCUPATION	SCHOOL ENROL	WORKERS IN CONSTR. ZONE	HAZ MATERIAL
Prison	YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>
VEH. COLOR	VEH. YEAR	VEHICLE MAKE	VEH. TYPE
VIOLATION DATE		VIOL. TIME	CONDITIONS
5-18-13		2:30	Off light
		AM <input type="checkbox"/> PM <input type="checkbox"/>	Dark
			Wet
VIOLATION LOCATION		COUNTY	DIRECTION
1111 Montopolis Dr.			
VIOLATION (A)		VIOL. CODE	
No temporary use permit		64301	
VIOLATION (B)		VIOL. CODE	
201071			
VIOLATION (C)		VIOL. CODE	
REASON FOR STOP			
311 Complaint			
RK	PS	VS	RFS
Cell phone	STEP	CAD	
ALLEGED SPEED	SPEED LIMIT	RADAR	LASER
		AIRCRAFT	VISUAL
OFFICER	EMP#	OFFICER	EMP#
Van Coover	51185		
If Non-Peace Officer, Sign Here.			
APPEARANCE DATE AT COURT / FECHA PARA PRESENTARSE		READ CITATION FOR ADDITIONAL INFORMATION AND OPERATING HOURS	
06-18-2013			
I HAVE RECEIVED THIS WRITTEN NOTICE TO APPEAR AND I WILL APPEAR AT THE CITY OF AUSTIN MUNICIPAL COURT ON OR BEFORE THE DATE AND TIME DESIGNATED ABOVE IN ORDER TO ENTER A PLEA OF GUILTY, NOT GUILTY OR NO CONTEST TO EACH VIOLATION LISTED ON THIS TICKET.			
SU FIRMA ES LA PROMESA QUE SE PRESENTARA EN LA CORTE MUNICIPAL PARA INFORMACION LLAME A (512) 974-4800			
SIGNATURE/SU FIRMA			
[Signature]			
READ INSTRUCTIONS ON THE BACK OF CITATION CAREFULLY.			

DEFENDANT COPY

EXHIBIT 16-1

GENERAL INFORMATION

This matter is now before the Court. Call (512) 974-4800 for information or visit our website at : www.cityofaustin.org/court.

2nd Conviction of No Vehicle Liability Insurance

A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.

NOTICE OF POTENTIAL SURCHARGE

A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver's license of a surcharge under the Driver Responsibility Program.

Failure to Respond

Failure to respond on or before the appearance date on the front of your ticket may result in:

1. A higher fine amount. You will be subject to paying the Standard Fine if you do not respond on or before your appearance date.
2. An ARREST WARRANT (additional \$50 fee) issued against you
3. A request to the Texas DPS for denial of driver's license renewal and a \$30.00 fee may be added.
4. A request to the Texas Department of Transportation to withhold your vehicle registration renewal.
5. Referral to a collection agency with a possible 30% fee added to the amount owed.

ADMONISHMENT

If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

SPECIAL INSTRUCTIONS FOR JUVENILES AND MINORS

If you are under 17 years of age you will be notified by mail when to appear with your parent or guardian. You must appear before a judge.
DO NOT MAIL FINE PAYMENT.

Address Notification: You and your parent or guardian are required by law to provide to the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against both you and your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated.



City of Austin
Municipal Court

Evelyn McKee Rebecca Stark
Presiding Judge Clerk of the Court

EXHIBIT 16-2

Address: 700 E. 7th St., Austin, TX 78701
Mail: P.O. Box 2135, Austin, TX 78768
Phone: (512) 974-4800
Internet: www.austintexas.gov/court
E-mail: court@austintexas.gov

June 20, 2013

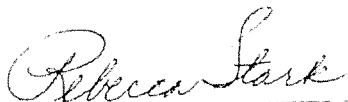
Albert Ruiz
1111 Montopolis DR
Austin, TX. 787413325

NOTICE OF CANCELLATION

RE: Cause No. - 7923874
Ticket No. - 13661515

Dear: Albert Ruiz

Please disregard the notice requiring your appearance on Thursday, the 18th day of July, 2013 at 3:30 PM in Courtroom #3, located on the third floor. The case has been reset and your appearance is not required at this time. You will be notified by mail of your new Court date as soon as the case is rescheduled on the docket.


Clerk of the Court



The City of Austin is committed to compliance with the American with Disabilities Act
Reasonable modifications and equal access to communications will be provided upon request

Cancel
felalb

101/460

City of Austin Municipal Court

EXHIBIT 16-3

700 East 7th Street

P.O. Box 2135 Austin, Texas 78768

Phone: (512) 974-4800

State of Texas vs.

Albert Ruiz

Cause No. (s):

7923874

ORDERS OF THE COURT

This Order applies to 1 cases (s) with fines totaling \$ _____

Hearing as to Indigency: Finding: [] Indigent [] Not Indigent

EXTENSION TO PAY: \$ _____ Today; \$ _____ by (date) _____
 \$ _____ every week/month beginning (date) _____ and due on or before the
 same day of each succeeding week/month until paid in full.

COMMUNITY SERVICE: Defendant is ordered to perform _____ hours of community service at _____

- ☐ All community service hours must be completed by (date) _____
- ☐ The Defendant shall perform _____ hours of community service by _____; then, _____ hours
 per week/month beginning (date) _____ and such proof is due every week/month thereafter on or
 before the same day of each succeeding week/month until total hours are completed. Turn in proof at
 Municipal Court,

And the court having further found that the working of more than 16 hours of community service per week (will) (will not) work a hardship on the
 Defendant.

SET APPEARANCE AND NOTIFY DEFENDANT/ATTORNEY FOR: ENAD DOCKET

Appearance set for _____ AM PM on (date) _____ Courtroom # _____

Bond: \$ _____ by (date) _____ Personal Bond _____

REVOKE DEFERRAL / DEFENSIVE DRIVING: _____ and enter judgment.

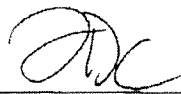
EXTENSION TO COMPLETE DEFERRAL or DEFENSIVE DRIVING BY (date) _____;

TO TURN IN PROOF BY (date) _____.

JURY WAIVER: I waive my right to trial by jury in the above-referenced cause numbers.

Date _____ Signature of Defendant _____

Order Notes: Agree to dismiss if ordinance passes on 10/24/13
Agenda no. 65 (R14) 10/24/13

Date: 10-23-13

 Judge of the Municipal Court

700 E. 7th Street

City of Austin Municipal Court
P.O. Box 2135 Austin, Texas 78768-2135

EXHIBIT 16-4
(512) 974-4800

State of Texas vs.

Ruiz

Cause No. 7923874

Offense: zoning - No Temp. Use Perm.

Jury Waiver: I waive my right to trial by jury and plead Not Guilty to the Court.

Date: Signature:

NOTICE: Renewal of Defendant's driver's license may be suspended for failure to appear at court and/or failure to pay a judgment in the case. In order to clear any such suspension Defendant is required to pay the Clerk a \$30 administrative fee in addition to any judgment in the case.

On this, the _____ at the required time of this court, came the described cause to be heard and the Defendant:

☐ Having been informed of his right to trial entered his/her appearance and waived said right to trial by pleading

(Guilty), (No Contest).

☐ Was present in court and, having waived a jury, announced ready for trial, and entered a plea of not guilty in open court.

And after hearing the evidence and argument, and after due consideration of the same, the court finds the Defendant

(Guilty), (Not Guilty),

of the offense in the complaint in this case.

It is therefore ordered and adjudged by the court that the State of Texas for the benefit of the City of Austin, Texas, do have and recover of the Defendant the sum of \$ _____ as the fine assessed and costs in this case; plus \$25 if not paid in full in 30 days; plus the following administrative fees as applicable: \$50 capias pro fine warrant fee; \$30 driver license denial fee and 30% collection fee.

The Court finds that the period which will satisfy the fine and costs is 24 or _____ hours.

Judge, Municipal Court, City of Austin, Texas

Hearing as to Indigency:Finding: ☐ Indigent ☐ Not Indigent

Plea of No Contest: I, hereby enter my appearance for the offense charged in the above-referenced cause, waive my right to a trial by Jury or Judge, plead no contest to the offense alleged by the citation and/or complaint in this cause, and agree to satisfy the penalty assessed by the Court.

Signature: Date:

Atty/Parent: Date:

Address:

FURTHER ORDERS:☐ DSC Mandatory☐ Deferred Disposition

Proof of completion by: _____

☐ Post Fee, bond, or make payment of \$ _____ by _____

☐ Extension to pay \$ _____ monthly/weekly until balance is paid, start payment _____

☐ Community Service: _____ hours to be done at any place on the adult - youth list of CSR providers or at any other non-profit agency doing non-religious, non-political work.

Turn in proof of _____ hours by _____

then turn in proof of _____ hours per month / week until _____

all hours are done beginning _____

☐ Jail Credit: _____☐ Total layout credit/Time Served:☐ Concurrent☐ Consecutive**Address Notification for Minors:**

You and your parent, or guardian are required by law to provide the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against you, your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated.

State's Motion to Dismiss:

Date: 11/25/13 IE NPO NPO2 IEO IEO2 PH

Other: _____

Assistant City Attorney

Order of Dismissal

On this 11/25/13, the motion of the STATE is hereby granted and the charge in this cause is ordered DISMISSED.

Judge - Municipal Court, City of Austin, Texas

RECEIVED

DEC 06 2013

CITY OF AUSTIN

EXHIBIT 17

SNEED, VINE & PERRY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ESTABLISHED 1926

900 CONGRESS AVENUE, SUITE 300
AUSTIN, TEXAS 78701

TELEPHONE (512) 476-6955

Writer's Direct Dial:
(512) 494-3135

FACSIMILE (512) 476-1825

Writer's e-mail address:

December 6, 2013

By Hand Delivery

Board of Adjustment
c/o Susan Walker
505 Barton Springs Road
Room 530
Austin, Texas 78704

Re: Appeal of Decisions by City Staff to Declare Outdoor Activities Regulated by Section 25-2-921(C) to be Allowed Uses on Property having Schools and Religious Assembly as Principal Uses Regardless of the Zoning of the Property ("Land Use Determination").

Dear Chairman Jack and Members of the Austin Board of Adjustment:

This firm represents the Hill Country Estates Home Owners Association ("HCE") and the Covered Bridge Property Owners Association, Inc. ("CB") with respect to the Land Use Determination.

HCE and CB are registered neighborhood associations and meet the requirements of Section 25-1-131(A) & (C) LDC to be Interested Parties. Since January 2013, officers of CB and HCE have communicated their respective concerns to the Planning Commission and City Council at public hearings regarding Code Amendment C20-2012-016 that would have amended Section 25-2-921(C) of the Austin Zoning Code ("Code Amendment"). Communications also include a meeting with City staff in October 2013 to discuss changes to the Code Amendment requested by CB and HCE.

On November 18, 2013, City Staff sent to the Mayor and City Council a memorandum explaining why City staff was withdrawing its request for the Code Amendment. The memorandum, a copy of which is attached to the appeal application, explains that City Staff decided to reinterpret Section 25-2-921(C) and other code sections so that the Code Amendment was no longer necessary. In other words, the change to the Zoning Code that Staff had requested the Council to make were accomplished by administrative decisions or actions.

The November 18, 2013 memorandum does not indicate that anyone requested the specific interpretations made in the memorandum and City Staff did not mail notices of the to CB or HCE regarding the new interpretations as required by Section 25-1-197(E)(3)(a).


Pursuant to Section 2-1-111(F)(2) of the City Code and Section 211.010(a)(1), Texas Local Government Code, HCE and CB file their appeal of the administrative actions and decisions announced in the November 18, 2013 memorandum. The CB/HCE appeal to the Board of Adjustment alleges that Director Guernsey made one or more errors in his decision that outdoor fairs, festivals, exhibit, carnivals and similar events held at educational and religious assembly facilities are allowed uses and, therefore, are not subject to Section 25-2-921(C) of the Austin Zoning Code. The CB/HCE appeal also alleges that Director Guernsey made an error in his decision that outdoor religious assembly is an allowed use that is not subject to Section 25-2-921(C).

Mr. Frank Goodloe is treasurer of CB and Margaret Butler is the President of HCE. Both HCE and CB are registered neighborhood associations with the City of Austin. The contact information for Margaret Butler is (512) 699-6692 and her mailing address is 7100 Bright Star Lane, Austin, Texas 78736. The contact information for Frank Goodloe is (512) 906-1931 and his mailing address is 6705 Covered Bridge, Unit 10, Austin, Texas 78736.

Please let me know if there are any questions.

Sincerely,

SNEED, VINE & PERRY, P.C.

By: 
Robert Kleeman

RJK:dm

RECEIVED

DEC 06 2013

CITY OF AUSTIN

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS

PART I: APPLICANT'S STATEMENT

(Please type)

STREET ADDRESS: Not applicable.

LEGAL DESCRIPTION: Not Applicable

Lot (s) _____ Block _____ Outlot _____ Division _____

ZONING DISTRICT: Not applicable

We, Margaret Butler, on behalf of myself, and as Authorized Agent for Hill Country Estates Home Owners Association and Frank Goodloe, on behalf of myself, and as Authorized Agent for Covered Bridge Property Owners Association, Inc., affirm that on December 6, 2013, we hereby apply for an interpretation hearing before the Board of Adjustment.

The Planning and Development Review Department interpretations are:

1. Outdoor fairs, carnivals and festivals are integral, customary, and incidental to the primary use of religious assembly.¹ That is, outdoor fairs, carnivals and festivals are allowed uses in all zoning districts with a principal use of religious assembly.
2. Outdoor fairs, carnivals and festivals are integral, customary, and incidental to the primary use of primary and secondary educational facilities. That is, outdoor fairs, carnivals and festivals are allowed uses in all zoning districts with the principal uses of primary and secondary educational facilities.
3. Outdoor religious assembly use is permitted in all zoning districts on property that has a principal developed use of religious assembly.²

¹ Quote is from page 2 of November 18, 2013 memorandum from Greg Guernsey to the Mayor and Council. A copy of this memorandum is attached.

² See the fourth paragraph on page 2 of November 18, 2013 Guernsey memorandum. See also subsection (D) of the Staff proposed amendment to Section 25-2-921(C) before Staff withdrew the Code Amendment.

that outdoor fairs, festivals and carnivals are part of an educational curriculum or that such activities constitute religious worship or religious education.

The plain language of the LDC is clear and unambiguous: Section 25-2-921(C) of the LDC requires a temporary use permit for outdoor religious assembly, public assembly or an outdoor exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience, except the Building Official has no authority to issue a temporary use permit for these types of outdoor activities in the LA, RR, SF-1, SF-2 and SF-3 zoning districts.

The significance of the authority provided and not provided to the Building Official by Section 25-2-921(C) of the LDC is made clear by Section 9-2-1(15) of the City Code which defines a Temporary Use Permit as:

“a permit issued by the Planning and Development Review Department under Chapter 25-2, Article 6 (*Temporary Uses*) to authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district.” (Emphasis added)

Importantly, Mr. Guernsey does not contend that outdoor fairs, festivals and carnivals at schools and churches are uses that have not been previously classified within a zoning category or land use definition. After all, Staff had sought an amendment to Section 25-2-921(C) because Staff was interpreting Section 25-2-921(C) exactly as the appellants do in this appeal. Instead, he argues that the lack of enforcement of the LDC provisions prohibiting these activities allows staff to now ignore these provisions. Under the circumstances, City Staff have no authority under Section 25-2-2 of the LDC to reclassify the outdoor activities described in the November 18, 2013 Memorandum.

Outdoor Religious Assembly is Prohibited as a Principal and Accessory Use

The fourth paragraph on page 2 of the November 18th Memorandum appears to be an interpretation of Religious Assembly as a use allowed outdoors: staff believes that Section 25-2-921(C) is intended to regulate traveling preachers “ . . . setting up a large tent for a revival on a vacant lot . . . ” By this example of the type of outdoor religious assembly activity that Section 25-2-921(C) of the LDC might apply to, Mr. Guernsey excludes lots and properties with buildings used for religious assembly from being subject to Section 25-2-921(C) of the LDC.

Mr. Guernsey's example of the type of outdoor religious assembly use that Section 25-2-921(C) might apply must be considered in the context of the proposed amendment to Section 25-2-921 that Staff had presented to the Council in early November 2013. In the now withdrawn code amendment, Staff had included the following as subsection (D):

“This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services.”

If adopted, the proposed subsection (D) would have made outdoor “religious services” an allowed activity in all zoning districts.⁵ The traveling preacher example is entirely consistent with the above language that Staff had requested the City Council to approve.

Again, the plain language of the LDC is clear and unambiguous regarding outdoor religious assembly activities. Section 25-2-6(B)(41) defines Religious Assembly as follows:

RELIGIOUS ASSEMBLY use is regular organized religious worship or religious education in a permanent or temporary building. The use excludes private primary or secondary educational facilities, community recreational facilities, day care facilities, and parking facilities. A property tax exemption is prima facie evidence of religious assembly use.

The part of the definition of Religious Assembly that requires the activity to be “in a permanent or temporary building” is entirely consistent with the Section 25-2-921(C) requirement for a temporary use permit for outdoor religious assembly in all zoning districts except in those district where outdoor religious assembly can never be permitted (LA through SF-3). See Section 25-2-921(C)(1). Additionally, the definition of Religious Assembly explicitly excludes community recreational facilities.

As previously discussed, Section 9-2-1(15) of the City Code states that temporary use permits authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district. Staff’s previously proposed subsection (D) to Section 25-2-921 evidences that prior to the November 18th Memorandum Staff concurred with our position that outdoor religious assembly is not allowed unless a temporary use permit is issued pursuant to Section 25-2-921(C).

Prohibited Principal Use Cannot Be an Accessory Use

To the extent that outdoor fairs, carnivals and festivals are prohibited as principal religious assembly and educational facility uses, outdoor fairs, carnivals and festivals are prohibited as accessory uses and activities. Section 25-2-892 of the LDC states: “The regulations applicable to a principal use apply to an accessory use, except as otherwise provided in this division.”⁶ As previously discussed, these outdoor activities cannot be principal uses because they are explicitly prohibited as reflected in Section 25-2-921(C). Therefore, a prohibited principal use cannot be an accessory use unless another section of Article 6 authorizes the activity as an accessory use.

Religious Assembly and educational facilities are classified as civic uses. Section 25-2-897 of the LDC identifies the accessory uses for a principal civic use. This

⁵ The LDC does not define the term “religious service”. How the term “religious service” differs from the term “religious worship” found in the definition of Religious Assembly was never explained.

⁶ Article 6 of Chapter C of Chapter 25-2 does not have any divisions.

section does not describe any activity similar to those activities described in Section 25-2-921(C) or in the November 18th Memorandum.

Community Recreation

The outdoor fairs, carnivals and festivals described in the November 18th Memorandum fall easily within the definition of "community recreation (private)." Section 25-2-6(B)(6) of the LDC defines private community recreation as "the use of a site for the provision of an indoor or outdoor recreational facility for use by residents or guests of a residential development, planned unit development, church, private primary or secondary educational facility, club or lodge, or non-profit organization." As noted above, community recreation facilities cannot be an allowed activity under Religious Assembly.

According to the zoning use summary table found in Section 25-2-491(C) of the LDC, community recreation (private) is a conditional use in all residential, multifamily and office zoning districts. A conditional use is allowed only upon the approval of a conditional use site plan approved by a Land Use Commission. As to Religious Assembly, Staff cannot, by interpretation, make a use or activity that is explicitly a conditional use into an allowed use. Only the City Council has the authority to amend the zoning code.

Carnivals

The November 18th Memorandum uses the term "carnival" even though that term does not appear in Section 25-2-921(C) of the LDC. The LDC does not define the term "carnival" but the term does appear in Section 25-2-921(A)(2). Section 4-3-21 of the City Code defines "carnival" as "the operation or exhibition of a ride, game of skill, or chance game booth not permanently located in an amusement park, side show, concession stand, or other feature ordinarily operated or exhibited at a traveling or itinerant carnival show." Section 4-3-23 of the City Code requires an operating permit to be issued for a carnival. To the extent any of the zoning code interpretations found in the November 18th Memorandum are upheld by the Board of Adjustment, the term "carnival" should be deleted.



2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

The new interpretations of the Austin Zoning Code in the November 18 Memorandum would permit outdoor activities and uses that are not in character with the uses enumerated in the various zoning districts or the objectives of the zoning code. As discussed in the previous section, the use interpretations found in the November 18 Memorandum do not entail uses that had never been classified before or addressed in the LDC. To the contrary, the LDC explicitly prohibits these outdoor activities in Section 25-2-921(C). Our interpretation is supported by the other provisions in the City Code discussed in the prior section.

The outdoor activities described in the November 18th Memorandum are clearly in the nature of community recreation which is a conditional use in all residential, multifamily and office zoning districts. The process and criteria for the approval of a conditional use permit (Article 3 of Chapter 25-5) demonstrate that conditional uses are not necessarily in character with the allowed uses in a base zoning district. According to the November 18 Memorandum, Staff now says these outdoor community recreation type uses (conditional uses in most zoning districts) are permitted uses without any public involvement or public hearings.

The safeguards and public hearing processes of conditional uses must be maintained to protect neighborhoods.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

Because the interpretations being appealed do not pertain to a specific parcel of land, this question is not applicable.

APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Margaret G. Butler Printed Margaret G. Butler

Mailing Address 7100 Bright Star Ln.

City, State & Zip Austin, Tx. 78736 Phone (512) 699-6692

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____



APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Frank W. Goodloe Printed FRANK W. GOODLOE

Mailing Address 6705 COVERED BRIDGE DR. UNIT 10

City, State & Zip AUSTIN, TX. 78736 Phone 512-906-4931

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
RELATING TO TEMPORARY USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection (C) of City Code Section 25-2-921 (Temporary Uses Described) is amended as follows:

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public) and the number of events per property does not exceed four per year, at no more than two days per event;

(2) ~~[(1)]~~ for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(3) ~~[(2)]~~ for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(4) ~~[(3)]~~ for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services.

1
2 **PART 2.** This ordinance takes effect on _____, 2013.

3 **PASSED AND APPROVED**

4
5
6
7 _____, 2013

§
§
§


Lee Leffingwell
Mayor

10
11
12 **APPROVED:**

Karen M. Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

AUSTIN CITY COUNCIL				
AGENDA				
				
Recommendation for Council Action				
Austin City Council	Item ID	28859	Agenda Number	72.
Meeting Date:	11/21/2013	Department:	Planning and Development Review	
Subject				
<p>Approve second and third readings of an ordinance amending City Code Section 25-2-921 to allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. THE PUBLIC HEARING FOR THIS ITEM WAS HELD AND CLOSED ON APRIL 25, 2013.</p>				
Amount and Source of Funding				
Fiscal Note				
Purchasing Language:				
Prior Council Action:	April 25, 2013: Council conducted a public hearing and approved on first reading.			
For More Information:	Greg Dulton, 512-974-3509.			
Boards and Commission Action:	March 12, 2013 - Approved by Planning Commission on a 8-0 vote with Commissioner Anderson absent.			
MBE / WBE:				
Related Items:				
Additional Backup Information				
<p>This amendment has the following proposed changes:</p> <p>Certain properties are currently prohibited from applying for temporary permits for outdoor events, depending on the zoning of the property. The proposed amendment would allow a property whose principal developed use is religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, public secondary educational facilities, or public community recreation, to apply for a temporary use permit for outdoor assembly, regardless of zoning district. The number of events would be limited to four per year per property, at no more than two days per event.</p> <p>Staff recommends approval of this amendment.</p>				

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

Council Action

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

Ordinance Number: NA



MEMORANDUM

To: Mayor and Council

From: Gregory I. Guernsey, AICP, Director
Planning and Development Review Department

Date: November 18, 2013

Subject: Item 72 – Code Amendment - Temporary Use Permits for Public Assembly
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

- (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*
- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
 - (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
 - (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager
Carl Smart, Director Code Compliance Department
Chief Rhoda Mae Kerr, Austin Fire Department
Jerry Rusthoven, Division Manager, Planning and Development Review Department

EXHIBIT 18

Robert Kleeman

From: [REDACTED]
Sent: Thursday, January 09, 2014 1:48 PM
To: [REDACTED]
Subject: Board of Adjustment Appeal

Follow Up Flag: Follow up
Flag Status: Flagged

Robert –

I hope you enjoyed the holidays and that your new year is off to a good start.

I'm writing in regards to your Board of Adjustment ("BOA") appeal, dated December 6, 2013, which challenges statements made in a memo from Director Greg Guernsey to the City Council in support of his decision to withdraw his department's recommendation for a code amendment previously proposed by his staff. The amendment would have authorized the issuance of Temporary Use Permits ("TUPs") for fairs, festivals, and similar activities occurring at schools and churches.

PDRD has determined that Director Guernsey's memo is not an "administrative decision" and is therefore not within the BOA's jurisdiction to review. Since I understand that you are likely to question this determination, please accept following explanation in support of the department's position:

- The BOA's appellate jurisdiction under state law is limited to actual decisions made in the enforcement of a zoning ordinance and does not extend to recommendations made by staff in the context of a legislative process. See Texas Local Gov't Code, Sec. 211.009 (authorizing the BOA to hear appeals of an "**order, requirement, decision, or determination** made by an administrative official in the **enforcement** of [a zoning ordinance]") (emphasis added).
- Director Guernsey's memo did not order, require, decide, or enforce anything, nor did it constitute a "Land Use Determination" as that term is used in City Code Section 25-1-197. Rather, the memo merely set forth his recommendation that Council not adopt new permitting requirements for schools and churches. The 2012 code enforcement incident that he mentions as background for this recommendation had been resolved long before the memo was issued.
- The positions outlined in the memo are not new. As Director Guernsey states, fairs and festivals at schools and churches "have long occurred in Austin" without requiring TUPs, subject to the limitations outlined in his memo. His recommendation not to amend City Code to begin requiring TUPs for these activities was just that – a recommendation – and did not constitute an administrative decision.

Please do not hesitate to contact me if you wish to discuss this matter further.

Thanks,

Brent D. Lloyd
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767-1088
(512) 974-2974

EXHIBIT 19

Robert Kleeman

From:
Sent:
To:
Cc:

Re: Dolores Church Concert and Festival

Mr. Smart:

Although I believe the Code does not allow such activities, but I do understand that is now the City's legal and official stance. I will remind you that City Attorney Brent Lloyd stated that the Church still must secure all the proper permits and must abide by the sound decibel level.

Thank you,

Martha

> On May 18, 2014, at 10:06 AM, "Smart, Carl" <Carl.Smart@austintexas.gov> wrote:
>

> Ms. Salinas,

> Thank you for your email regarding the outdoor event at Delores Catholic Church. I have conferred with Greg Guernsey and we agree that the church is allowed to hold such an event on their property in conformance with the codes. As Mr. Guernsey ruled earlier, the church does not need a TUP to hold this event.

>
> If there are further problems, please feel free to contact us. Again, thank you for your communication.

>
> Carl Smart
> Austin Code Compliance.
> (Sent from my iPhone)

>
>> On May 17, 2014, at 11:28 AM
wrote:

>>
>> The Dolores church is setting up for their carnival and concert for tomorrow. Will they be cited for having a carnival and concert without permits and for having it on a residential zoned property?
>>

>> Also should the City not cite the church for not having a TUP it will set precedent that such activities are legal.

>>

>> Thank you,

>>

>> Martha

EXHIBIT 20-1

From: L [REDACTED]
Sent: Friday, August 21, 2015 7:29 PM
To: Robert Kleeman
Subject: Life Austin - Interpretation of City Sound Regulations

Hi Robert –

This email responds to your letter, dated August 10, regarding the applicability of Chapter 9-2 (*Noise and Amplified Sound*) to events at Life Austin's outdoor amphitheater. As explained below, staff's decision not to require a sound permit is consistent with past practices for non-commercial properties and with the applicable provisions of city code.

City Code § 9-2-11 (Permit Required)

You argue that this section, which is copied below for reference, basically requires a permit from the City for any use of sound equipment—regardless of the context. Because of how broadly Chapter 9-2 defines “sound equipment,” that interpretation would essentially require City approval to operate any device that produces audible sound. Casting such a wide net would not be consistent with the intent of the ordinance.

Therefore, staff has generally interpreted the phrase “audible to the public” as limiting the permit requirement to situations where amplified sound can be heard beyond the property line, by those within the city limits. Additionally, as discussed below, the separate code section governing use of sound equipment on residential property (Section 9-2-5) does not expressly require a permit. For that reason, it cannot be said that obtaining a permit for such events is “prescribed by this article” within the meaning of Section 9-2-11's permitting requirement.

In practical terms, staff's interpretation has meant that sound permits have not generally been required for events held at residentially zoned fraternity and sorority houses or at single-family homes. Where decibel or hours limitations are exceeded, the code enforcement process provides an appropriate remedy for violations.

City Code § 9-2-5 (Restriction on Use of Sound Equipment in A Residential Area)

This code section, which is also copied below for reference, governs the use of sound equipment occurring on “residential property.” Staff has consistently interpreted this to mean events held on property zoned as residential. Unlike the separate requirements governing amplified music at commercial venues, this code section does not expressly require a permit and, according to staff, has never been interpreted to require one.

Your letter suggests that this provision is inapplicable to Life Austin because its property does not contain a residential use. In support of that interpretation, you argue that the language in Subsections (B)-(C) limiting decibels & hours restrictions to “sound audible

beyond the property line of a residence" would make no sense unless the property where sound equipment is used contains a residence.

In staff's view, however, the phrase "property line of a residence" can refer to the property line of residential structures adjacent to the property where sound equipment is used. Therefore, that phrase does not have the effect of limiting Section 9-2-5 to sites which contain a residential use. It's worth noting as well that many other requirements of City Code are specifically limited to sites "zoned and used" as residential. This suggests that Council would have used the phrase "zoned and used" had it intended to limit Section 9-2-5 in that manner.

Stubbs & Austin 360 Amphitheater

Your letter suggests that Life Austin is being treated differently than Stubbs or Austin 360 because those venues are both required to obtain sound permits. These venues are different than Life Austin, however, for the following reasons:

Stubb's is a commercial property, zoned for entertainment uses, and is thus subject to permitting requirements of Chapter 9-2 which apply to commercial venues. Austin360 is, I believe, allowed to operate as a commercial music venue under Local Government Code § 43.002 because the use was begun or planned prior to annexation.

I hope this response helps to clarify staff's interpretation of the sound ordinance. Please do not hesitate to contact us if you have further questions or concerns.

Thanks,

Brent

Brent D. Lloyd

Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767-1088
(512) 974-2974

CITED CODE SECTIONS

§ 9-2-11 - PERMIT REQUIRED.

A person must obtain a permit to:

- (1) operate sound equipment audible to the public as prescribed by this article, Chapter 8-1, Article 4 (Restrictions on Amplified Sound), and Section 14-8-34 (Permit Required for the Use of Sound Equipment); or

- (2) deliver, finish, place, or pour concrete between 7:00 p.m. and 6:00 a.m. in the Central Business District (CBD) base zoning district at property located within 600 feet of a residence, church, hospital, hotel, or motel.

§ 9-2-5 - RESTRICTION ON USE OF SOUND EQUIPMENT IN A RESIDENTIAL AREA.

- (A) This section applies to property zoned as residential under Section 25-2-32(B) (Zoning Districts and Map Codes).
- (B) A person may not use sound equipment that produces sound audible beyond the property line of a residence in a residential area between 10:00 p.m. and 10:00 a.m.
- (C) A person may not use sound equipment audible beyond the property line of a residence in a residential area that produces sound in excess of 75 decibels.

EXHIBIT 20-2

Kleeman, Robert

From:

Sent:

To:

Cc:

Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

FYI

From: Lloyd, Brent [mailto:Brent.Lloyd@austintexas.gov]**Sent:** Wednesday, December 07, 2011 12:03 PM**To:** Kleeman, Robert**Cc:** Guernsey, Greg; Pitts, Don; Murray, David**Subject:** RE: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

Robert –

Just wanted to follow-up with you regarding your questions to Greg. We finally got to touch base on this yesterday and both agree as to the following:

1. **Can a sound permit be issued for a structure in an RR zoned district? Can a sound permit ever be issued for an RR zoned property?**

Yes, the site would be eligible to request a sound amplification permit subject to all applicable requirements in Chapter 9-2. There is no blanket restriction against issuing sound amplification permits within residentially zoned areas.

However, as we've previously discussed, any permit would require an impact plan consistent with Chapter 9-2, Division 3 (*Outdoor Music Permits*). An impact plan may include site-specific limitations on outdoor music, including decibel levels and hours of operation, as well as conditions to help mitigate impacts on adjoining residential areas.

Additionally, a permit would be subject to any general limits on hours of operation that are applicable under Section 9-2-14 (*Restrictions on Permits Impacting Residential Properties*) (copied below). In applying this provision, the department measures applicable distances from the location of the sound equipment to the property line of the nearest property that is zoned and used as residential.

2. **What if the structure is considered a Religious Assembly use? How is religious assembly classified under the sound ordinance when the zoning is residential?**

Religious assembly is a civic use per Section 25-2-6(41) (*Religious Assembly Use*). That means the restrictions in Subsections (B) & (C) of Section 9-2-5 (*Restrictions on the Use of Sound Equipment in a Residential Area*) don't apply, since they are triggered only when a residence is located on the property.

However, as stated above, a sound amplification permit would be subject to the restrictions in Section 9-2-14 and any specific conditions included in an event impact plan. Both are intended to afford some protections to adjoining residential areas.

12/7/2011

3. If a sound permit is not issued, what are the applicable sound regulations?

The use of sound equipment for outdoor music requires a permit issued Chapter 9-2, Division 3, Subpart B (*Live Music Permits*). See Section 9-2-35 (*Applicability*) (copied below). It would be a code violation to use sound equipment for outdoor music without obtaining the proper permit.

4. When in the process is the applicant required to apply for a sound permit? When the building permit application is filed? Prior to building permit issuance? If at the building permit stage, what is the process for your department to be notified?

The two permits are separate, and it's up to the applicant when to request a sound amplification permit. Issuance of a building permit does not authorize the use of sound equipment.

5. If the sound permit is not required for the issuance of building permit, does the building inspection department issue a building permit that includes wiring for an amplified sound system?

I am not aware of any prohibition against including wiring that may or may not be used. However, I will pose this question to the Building Official since the issue relates to administration of city technical codes.

6. Is there any action that the two adjoining neighborhoods can do under the City Code to protect themselves?

Assuming the applicant obtained a live music permit, the event impact plan would include protections to help mitigate impacts. Property owners would be free to consider installing additional mitigation, such as sound barriers, subject to applicable zoning and technical code restrictions.

7. If a sound permit is applied for, do interested parties have standing to appeal the granting of such a permit? Interested parties that are not the applicant?

Yes, all live music permits have a right of appeal except 24-hour permits that may only be issued once a month. The applicable requirements are codified in Subpart D (*Review, Notification, and Appeal*), which includes provisions for interested parties (other than an applicant) to appeal the director's decision on a permit application.

8. Have any rules been adopted or proposed relating to the sound ordinance?

No.

I hope this information is helpful. Please don't hesitate to contact me or Greg if you have further questions regarding the requirements of city code.

Thanks,

Brent D. Lloyd
Assistant City Attorney
(512) 974-2974

CITED CODE SECTIONS:

§ 9-2-14 RESTRICTIONS ON PERMITS IMPACTING RESIDENTIAL PROPERTIES.

- (A) The limitations in this section apply to all permits for the use* sound equipment

authorized under this chapter.

- (B) The accountable official may not issue a permit for use of sound equipment within 100 feet of property zoned and used as residential, except as authorized under Section 9-2-21 (*Permit for Concrete Installation During Non-Peak Hour Periods*), Chapter 8-1, Article 4 (*Restrictions on Amplified Sound*), or Section 14-8-34 (*Permit Required for the Use of Sound Equipment*).
- (C) The accountable official may issue a permit for use of sound equipment, as authorized by this chapter, for property that is:
- (1) beyond 100 feet but within 600 feet of property that is zoned and used as residential, between:
 - (a) 10:00 a.m. and 8:00 p.m. on Sunday through Thursday; or
 - (b) 10:00 a.m. and 10:00 p.m. on Friday or Saturday; and
 - (2) beyond 600 feet of property that is zoned and used as residential, between 10:00 a.m. and 2:00 a.m.

§ 9-2-35 APPLICABILITY.

A live music permit is required under this subpart to use sound equipment for outdoor music that involves the amplification of sound from instruments, vocal and instrument microphones, turntables, and digital or analog devices used as part of a performance requiring human operation from song to song.

Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

FYI

Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

please advise on the zoning questions.

thank you

Sent: Monday, November 14, 2011 3:54 PM
To: Pitts, Don
Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

Robert Kleeman
MUNSCH HARDT
KOPF & HARR, P.C.
DALLAS | HOUSTON | AUSTIN

Frost Bank Tower
401 Congress Avenue, Suite 3050
Austin, Texas 78701-4071
Direct 512.391.6115
Fax 512.482.8932

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Subject: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

The Mayor's office suggested that I contact you regarding how the City's sound ordinance will operate with respect to the improvements described in the above referenced site development permit.

The property is zoned RR. The proposed project is represented to be a Religious Assembly use which is more broadly classified as a Civic Use. This site plan includes an amphitheater with 1,000 covered seats and hill side seating behind the covered seating. Estimates of projected total attendance capacity have been as high as 3,500. I live in a neighborhood near this project.

My questions are:

1. Can a sound permit be issued for a structure in an RR zoned district? Can a sound permit ever be issued for an RR zoned property
2. What if the structure is considered a Religious Assembly use? How is religious assembly classified under the sound ordinance when the zoning is residential?
3. If a sound permit is not issued, what are the applicable sound regulations?

12/7/2011

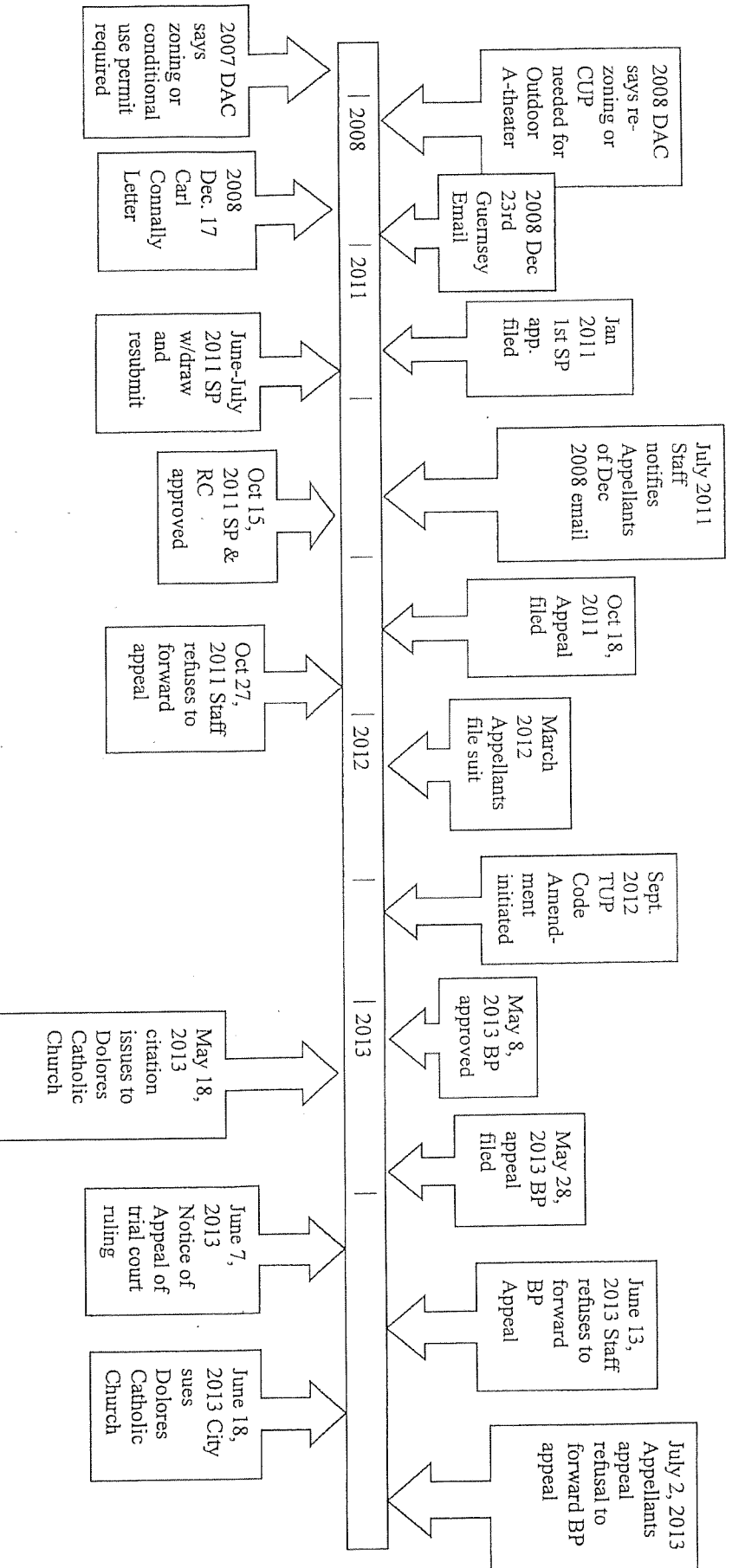
4. When in the process is the applicant required to apply for a sound permit? When the building permit application is filed? Prior to building permit issuance? If at the building permit stage, what is the process for your department to be notified?
5. If the sound permit is not required for the issuance of building permit, does the building inspection department issue a building permit that includes wiring for an amplified sound system?
6. Is there any action that the two adjoining neighborhoods can do under the City Code to protect themselves?
7. If a sound permit is applied for, do interested parties have standing to appeal the granting of such a permit? Interested parties that are not the applicant?
8. Have any rules been adopted or proposed relating to the sound ordinance?

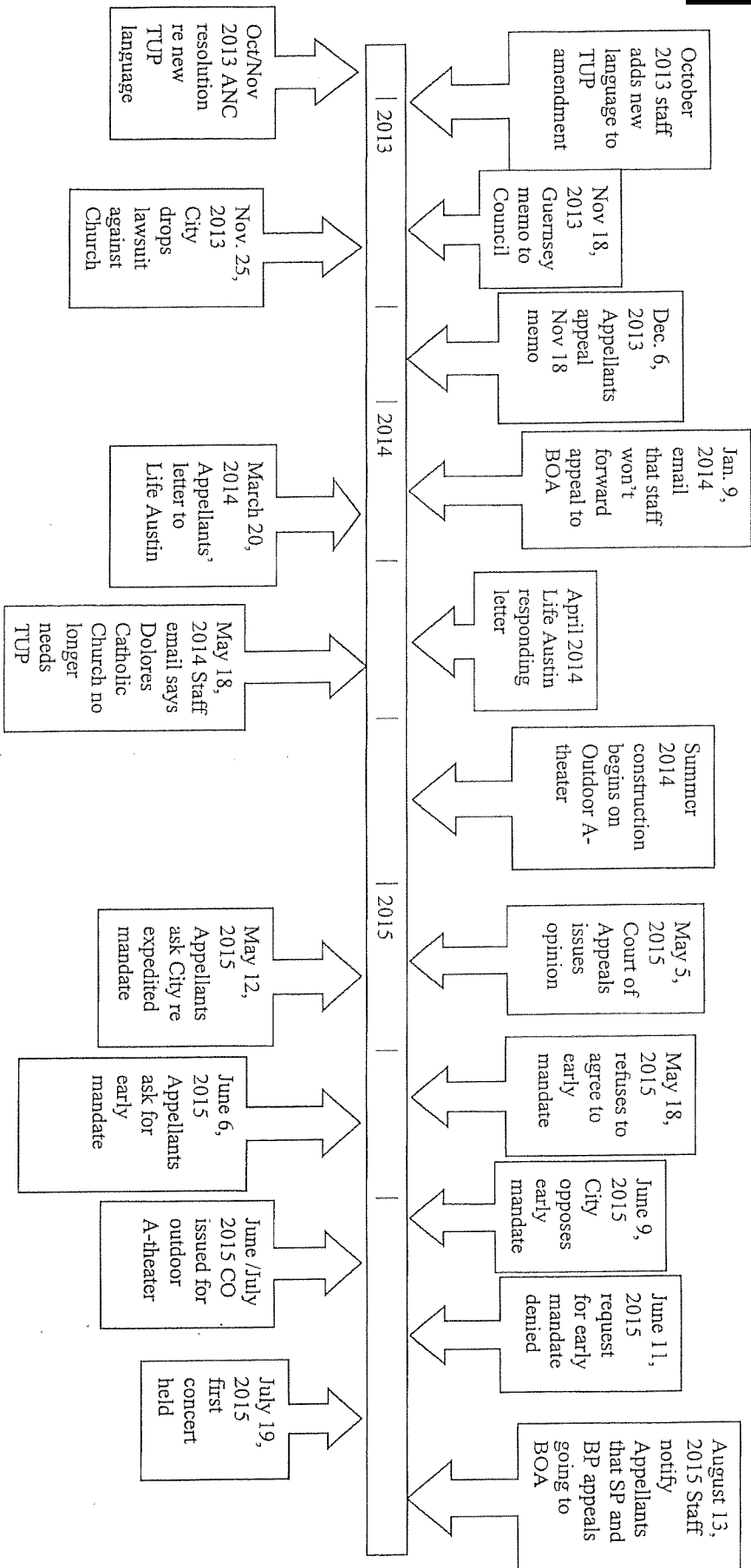
I will greatly appreciate your timely response.

Let me know if you have any questions.

EXHIBIT 21

Timeline








MEMORANDUM

To: Vincent Harding, Chair and
Members of the Board of Adjustment

From: Gregory I. Guernsey, AICP, Director
Planning and Zoning Department 

Date: October 26, 2015

Subject: Case No.: C15-2015-0147
Project: LifeAustin Church (formerly known as PromiseLand West)
Location: 8901 State Highway 71 West
Appellants: Kim Butler and the Hill Country Estates Home Owners Association, and
Frank Goodloe and the Covered Bridge Property Owners Association.

The affected parties have agreed to a postponement this appeal request to a special called Board of Adjustment (BOA) meeting scheduled to take place on Wednesday December 9 2015.

The appellants have filed several appeals requesting an interpretation of whether the City's determination that an outdoor amphitheater within a residential zoning district to authorize certain outdoor activities as a religious assembly use under the Austin City Code is correct. In addition, several other appeals have been filed associated with the issuance of the building permit, timeliness of appeals, not forwarding appeals to the BOA, the authority to Director of the Planning and Development Review Department (PDRD) to make a use determination, the ability of PDRD director to enter a contract (public restrictive covenant) with a landowner and grant vesting rights to uses on a property.

Staff disagrees with these appeals regarding the determination of the use of the subject property and subsequent issuance of development permits for a religious assembly use as defined by the Austin City Code. The Code defines a religious assembly use as "...regular organized religious worship or religious education in a permanent or temporary building. The use excludes private primary or secondary educational facilities, community recreational facilities, day care facilities, and parking facilities. A property tax exemption is prima facie evidence of religious assembly use." Additional information regarding this appeal will be provided by Staff in advance of the December BOA meeting.

With respect to the litigation, the Court ruled in our favor on 3 of their 4 claims, and only 1 claim remains which is that appeals be forwarded to the BOA.

CITY OF AUSTIN
Board of Adjustment - Interpretation
Decision Sheet

DATE: Monday, November 9, 2015

CASE NUMBER: C15-2015-0147

☐ Y ☐ Brooke Bailey
☐ - ☐ Michael Benaglio - out
☐ Y ☐ William Burkhardt
☐ Y ☐ Eric Goff Motion to **PP to December 9, 2015 Special Called mtg**
☐ Y ☐ Melissa Hawthorne **2nd the Motion**
☐ Y ☐ Don Leighton-Burwell
☐ Y ☐ Melissa Neslund
☐ Y ☐ James Valadez
☐ Y ☐ Michael Von Ohlen
☐ Y ☐ Kelly Blume

APPELLANT: Robert Kleeman

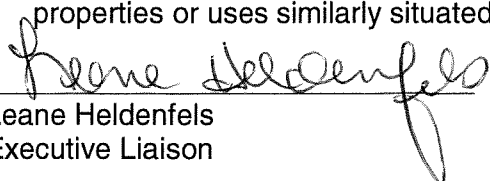
ADDRESS: 8901 SH 71

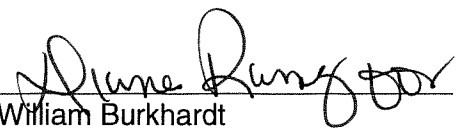
VARIANCE REQUESTED: The appellant has filed an appeal challenging a Land Use Determination and related development approvals made in connection with the approval of an outdoor amphitheater located at LifeAustin Church, 8901 West State Highway 71, including decisions to classify the use as “religious assembly” and to subsequently approve Site Plan No. SP-2011-0185C, an associated restrictive covenant, and a building permit. The appellant disagrees that, among other things, the Land Use Determination and related development approvals incorrectly treat various outdoor activities held at educational and religious assembly facilities as part of the principal use rather than as temporary activities subject to City Code Section 25-2-921(C) in an “RR-NP”, Rural Residential – Neighborhood Plan zoning district. (West Oak Hill)

BOARD’S DECISION: November 9, 2016 POSTPONED TO A SPECIAL CALLED MEETING DECEMBER 9, 2015, CITY COUNCIL CHAMBERS AT 7:00PM BY BOARD MEMBER ERIC GOFF, MELISSA HAWTHORNE SECOND ON A 9-0 VOTE

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:


 Leane Heldenfels
 Executive Liaison


 William Burkhardt
 Chairman

Heldenfels, Leane

From: [REDACTED]
Sent: Monday, November 09, 2015 10:55 AM
To: Heldenfels, Leane
Subject: LifeAustin: 8901 SH 71 West - Case number: C15-2015-0147

91
363

Dear Ms. Heldenfels,

I am contacting you in your capacity as staff liaison for the Austin Board of Adjustment (BOA). I have been a Covered Bridge community resident since 2010 and have lived through years of frustration with the intrusive behavior of Promiseland West/Life Austin Church and their determination to install an open air music venue with permanent sound amplification and a heavy schedule of events, including late night concerts, in the middle of our Rural Residential (RR) zoned neighborhood. This intrusion was inappropriately and illegally enabled and abetted by the City of Austin Planning and Zoning Department and its director, Greg Guernsey, refusing to forward our appeals of their decisions to the BOA, as required by law.

The Covered Bridge and Hill Country Estates neighborhoods have suffered with this intrusion for years. The neighborhoods have had to spend large sums of money trying to stop the building of the amphitheater and to contest the vacillating decision and obstruction presented by Mr. Guernsey and other city staff. We have had multiple meetings with the church and offered many reasonable options, none of which were adopted. Now that the church has proceeded with building and operating this illegal music venue, residents in these neighborhoods and others are having to deal with these intrusive sounds in their homes with doors and windows closed!

Please help us make this right by the following requests:

- I ask the Board of Adjustment to GRANT the appeals filed by Hill Country Estates HOA and the Covered Bridge POA
- I ask the Board of Adjustment to direct city staff to forward the Temporary Use Permit appeal filed by Hill Country Estates HOA and Covered Bridge POA to the BOA
- The hearing on the site plan and building permit appeals is currently on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. I ask that the request by the neighborhoods to postpone the hearing until December 9, 2015 be granted

Thank you for your assistance,

George

I01/493



George Colburn

Covered Bridge

7619 Crackling Creek, Austin TX 78736

GI
364

Heldenfels, Leane

From: [REDACTED]
Sent: Friday, November 06, 2015 1:49 PM
To: Heldenfels, Leane
Subject: Case Number C15-2015-0147
Amphitheater 8901 SH 71 West

Life Austin Outdoor

Leane,

I am emailing on behalf of myself, my husband and our three boys as 10 year residents of Covered Bridge and Oak Hill. We love our neighborhood and Oak Hill. We built our home here because of the beauty and peace and quiet in the area and are truly heartbroken by the unjust decisions of city staff to allow the illegal building of the LifeAustin amphitheater.

The amphitheater is so disruptive to the area residents we can not relax in our backyards or homes and enjoy our precious family time without hearing rock concerts and seeing spotlights.

We are, to be quite honest, absolutely stunned the city staff would continually disregard our rights as citizens of Austin living in an appropriately zoned rural residential area expressly excluding amplified sound.

We are pleading with the board to put themselves in our shoes. What if it was their home, their peace and quiet, time with their family, their property value and their rights that have been so carelessly and heartlessly disregarded.

We respectfully request:

- The Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.
- The Board of Adjustment to direct city staff to forward the Temporary Use Permit appeal filed by Hill Country Estates HOA and Covered Bridge POA to the BOA.
- The hearing on the site plan and building permit appeals is currently on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. I ask that the request by the neighborhoods to postpone the hearing until December 9, 2015 be granted.

Thank you for your time.

Kim and Eli del Angel

Sent from my iPhone

Heldenfels, Leane

G1

From: [REDACTED]
Sent: Friday, November 06, 2015 11:01 AM
To: Heldenfels, Leane
Subject: case ref number C15-2015-0147

367

Dear Ms Heldenfels,

My wife and I have been a resident of Austin since 1995. We live in a very pleasant neighborhood called Hill Country Estates. Recently a new church " Life Austin " built a facility adjacent to our neighborhood. This is fine except they also built an out door music venue which is very loud and is having a negative effect on our pleasant home.

We pay our property taxes (about \$100,000 to date) to live here. We expect that the Government agencies will do their job and enforce the laws and statutes to protect us from intrusions of nuisances such as the out door music venue that Life Austin has illegally built and operated at 8901 SH 71 West. If this problem is not rectified we will lose our peaceful neighbor hood and a substantial loss of property value (probably as much as the taxes we have paid).This is wrong!

This is not the Austin we have come to know and love.

This can be fixed. Please

1. Ask the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.
2. Ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country HOA and the Covered Bridge POA to the BOA.

Respectively,
Fred and Faith Andrews
9405 murmuring Creek Drive
Austin ,Texas
E mai [REDACTED]

Heldenfels, Leane

G1
368

From: [REDACTED]
Sent: Friday, November 06, 2015 10:52 AM
To: Heldenfels, Leane
Subject: LifeAustin: 8901 SH 71 West - Case number: C15-2015-0147

Subject: Case Number C15-2015-0147
Life Austin Outdoor Amphitheater 8901 SH 71 West

Ms. Heldenfels,

I am contacting you in your capacity as staff liaison for the Austin Board of Adjustment (BOA). As an 8 year resident of the Covered Bridge community, I have lived through 7 years of frustration with the intrusive behavior of Promiseland West/Life Austin Church and their determination to install an open air music venue with permanent sound amplification and a heavy schedule of events in the middle of our Rural Residential (RR) zoned neighborhood. This intrusion was inappropriately and illegally enabled and abetted by the City of Austin Planning and Zoning Department and its director, Greg Guernsey, refusing to forward our appeals of their decisions to the BOA, as required by law.

The Covered Bridge and Hill Country Estates neighborhoods have suffered with this intrusion for years. The neighborhoods have had to spend large sums of money trying to stop the amphitheater building and to contest the vacillating decisions and obstruction presented by Mr. Guernsey and other city staff. We have had multiple meetings with the church and offered many reasonable options, none of which were adopted. Now that the church has proceeded with building and operating this illegal music venue, residents are suffering intrusive sounds in their homes with doors closed and their TVs on.

This wrong needs to be righted. In that regard, I make the following requests:

- I ask the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.
- I ask the Board of Adjustment to direct city staff to forward the Temporary Use Permit appeal filed by Hill Country Estates HOA and Covered Bridge POA to the BOA.
- The hearing on the site plan and building permit appeals is currently on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. I ask that the request by the neighborhoods to postpone the hearing until December 9, 2015 be granted.

Respectfully,

I01/498

Frank Goodloe

6705 Covered Bridge Dr. Unit 10

Austin, Texas 78736

512-906-1931 Home

512-826-0158 Mobile

61
369



This email has been checked for viruses by Avast antivirus software.

www.avast.com

Heldenfels, Leane

From: [REDACTED]
Sent: Friday, November 06, 2015 10:29 AM
To: Heldenfels, Leane
Subject: LifeAustin C15-2015-0147

Ms. Heldenfels:

Good morning. I hope this communication finds you well. I am writing you this morning to forward my support to Hill Country Estates' appeal for revocation of LifeAustin's (located at 8901 SH 71 West) permit for an outdoor amphitheater in a residential area. I remember there being controversy surrounding the church and the amphitheater for some time, even before construction started. It concerns me greatly that such a venue was allowed to be constructed with such proximity to residential areas. If LifeAustin and the amphitheater already existed in place before the residences in the proximity were constructed we wouldn't be having this conversation.

Please forward my concern to an appropriate party. I appreciate your time. Feel free to contact me with questions or concerns.

Thank you,

Dave Burns
512 656 7572

Heldenfels, Leane

From: [REDACTED]
Sent: Friday, November 06, 2015 9:20 AM
To: Heldenfels, Leane
Subject: Appeals

Ms. Heldenfels, It is my hope that you would consider asking the Board of Adjustment to grant the appeals filed by the Hill Country Estates and the Covered Bridge HOA's in reference to case number: C15-2015-0147 (LifeAustin's church's amphitheatre issue). I am a resident of Austin in the Oak Hill area.

Respectfully,
Matt Bales
6501 Wolfcreek Pass
Austin, TX. 78749

Heldenfels, Leane

From: [REDACTED]
Sent: Friday, November 06, 2015 8:12 AM
To: Heldenfels, Leane
Subject: RE: BOA HEARING ABOUT LIFE AUSTIN OUTDOOR AMPHITHEATER

Hello Ms. Heldenfelds,
regarding the case number C15-2015-0147: Life Austin Outdoor Amphitheater (8901 SH 71 West):

I am a resident in Covered Bridge, and I am FOR allowing Life Austin to use and operate their Outdoor Amphitheater.

I am AGAINST this appeal (see email below) from our neighborhood association trying to prevent Life Austin from operating their outdoor amphitheater.

I believe that the Church Life Austin is a positive presence in our community and our neighborhood.

I am not a member of Life Austin Church, but I appreciate their positive presence and am thankful they are located near our neighborhood.

Thank you for considering my input in this matter. Kind regards,

-Benjamin Ehlers
8609 Fenton Dr.
Austin TX, 78736

ehlersb@hotmail.com
[REDACTED]

From: [REDACTED]
To: Ty [REDACTED]
Date: Tue, 3 Nov 2015 16:37:29 -0600
Subject: INFORMATION RE: BOA HEARING ABOUT LIFE AUSTIN OUTDOOR AMPHITHEATER

Residents who live in neighborhoods surrounding the LifeAustin outdoor amphitheater have expressed their concerns and opposition to the outdoor amphitheater for more than seven years. Two neighborhoods filed appeals regarding some of the unprecedented determinations made by city staff that allowed the outdoor amphitheater to be built.

It's important to note that under City code, *if a building permit or certificate of occupancy is determined to have been issued in error, it can be suspended and reversed by the City of **Austin Board of Adjustment** (BOA) regardless of the stage of building that has occurred.* LifeAustin and its pastor, Randy Phillips, were personally informed and in writing about this possibility well before they broke ground on building the outdoor amphitheater. Instead, they built the amphitheater and assumed the risk that they might not be able to use it in the future.

A hearing before the BOA is set for November 9, 2015; however, the neighborhoods have asked for a postponement to December 9, 2015. Please take a minute to share your personal experiences, opinions

and/or areas of concern in an email to the BOA. Your email should go to Leane Heldenfelds, the staff liaison for the BOA. Ms. Heldenfelds' email address is Leane.Heldenfelds@austintexas.gov

Please reference:

- 1) the case number: C15-2015-0147, and
- 2) the address for LifeAustin: 8901 SH 71 West

If you can, please send your email before November 8, 2015 so the BOA members will know on November 9th how many people are interested in the appeal. Please do not attempt to communicate directly with any member of the BOA. All communications must be sent to Ms. Heldenfelds.

Background Facts

The following is a very brief description of how the outdoor amphitheater was administratively approved without any public hearings, and how City staff blocked all attempts to allow neighbors to appeal the unprecedented approvals:

Site Plan Approval

In October 2011, City staff administratively approved the site plan submitted by PromiseLand Church West (aka Dream City and now known as "LifeAustin Church") that included the construction of a 1,500 seat outdoor amphitheater on property zoned Rural Residential.

Staff interpreted the "religious assembly" use to include outdoor religious assembly and an outdoor amphitheater as principal uses under religious assembly.

Staff interpretation also expanded "religious assembly use" to include musical and theatrical performances as well as benefit events at which tickets can be sold.

Staff's "interpretation" was made in a December 2008 private email between Greg Guernsey, Director of the City's Neighborhood Planning & Zoning Department, to a representative of LifeAustin Church. Neighbors first learned of the 2008 email in 2011.

Hill Country Estates HOA (HCE HOA) filed an appeal objecting to Staff's interpretation in October 2011.

Staff refused to send appeal to BOA claiming the appeal was not "timely." Staff said the "interpretation" had to be appealed within 20 days of when it was made (December 2008), although no notice of the "interpretation" was made to anyone other than LifeAustin.

HCE HOA and Covered Bridge Property Owners Association (CB POA) sued Director Guernsey and the City to require them to send appeal to the BOA as required by State law and City code, and to overturn interpretations that exceeded staff authority. The neighborhood associations did not sue LifeAustin.

City filed motion to dismiss lawsuit asserting the neighborhoods have "no standing" to sue the City and Guernsey.

Trial court granted City's motion to dismiss lawsuit on technical grounds in May 2013. Neighborhoods appealed to Court of Appeals.

In May 2015, Court of Appeals overturned trial court decision as to HCE HOA. Court of Appeals opinion said that trial court cannot decide standing to sue until BOA first decides standing issue.

City's Approval of Outdoor Amphitheater Building Permit

HCE HOA and CB POA filed appeal of City's and Guernsey's "interpretation" approving a building permit for LifeAustin's outdoor amphitheater.

Staff refused to forward building permit appeal to BOA.

In late 2012, staff sought an amendment to City Code Section 25-2-921(C) to authorize the building official to issue temporary use permits (TUP) in all residential zoning districts for outdoor benefits and festivals held on property used for education and religious assembly purposes.

In November 2013, staff issued a new interpretation of Section 25-2-921(C) in a memo that said due to non-enforcement, this code section no longer prohibits outdoor benefits and festivals on church and school property.

HCE HOA and CB POA filed appeal of City's and Guernsey's "interpretation" of the TUP in December 2013 ("TUP Appeal").

Staff refused to forward TUP Appeal to BOA claiming the November 2013 interpretation did not contain any "appealable" decisions.

Since November 2013, outdoor benefits and festivals held on property used for education and religious assembly purposes has been allowed as interpreted in the November 2013 memo.

Two of Three Appeals Now Allowed to Proceed

Staff agrees to send site plan and building permit appeals to BOA but not TUP Appeal.

Primary Appeal Issues for Site Plan and Building Permit Appeals

Director Guernsey approved the outdoor amphitheater as a religious assembly use. He said the zoning code did not make a distinction between indoor and outdoor religious assembly. This is incorrect. Section 25-2-921(C) of the zoning code prohibits all outdoor assembly (public, historic and religious), including benefits, festivals and other events likely to attract a mass gathering of people in the RR to SF-3 zoning districts. The LifeAustin property is zoned RR.

Section 25-2-921(C) of the zoning code authorizes the City Building Official to issue temporary use permits for outdoor gatherings of up to 50 people in SF-4 and less restrictive zoning districts. To have a gathering of more than 50 people, the property must be located in a non-residential zoning district.

Some Areas of Concern

Staff did not have the authority to administratively approve LifeAustin's construction of an outdoor amphitheater.

Ticketed concerts, plays and other forms of entertainment are not religious assembly.

City should enforce the zoning code as it is plainly written.

Staff's interpretations set a precedent to allow all church grounds to become outdoor entertainment venues.

If the code says non-residential zoning is required to have an outdoor event with more than 50 people, how can staff approve gatherings of 1,500 people in the RR zoning district?

The zoning code requires a "conditional use permit" (and public hearings) to be obtained before property owners can hold graduations, theatrical plays/productions, meetings, concerts, recitals, ballets, family movie nights, and other events in an event center. This requirement has been ignored by staff.

The amphitheater should be enclosed.

Rural Residential zoning means a rural and quiet neighborhood.

The LifeAustin outdoor amphitheater is not a residence and it is not quiet.

Loud concerts on school nights are bad for school aged children.

Harms property values. How would you feel if you could hear concert music inside your home?

The approval of the outdoor amphitheater violates the letter and the spirit of the zoning code.
Actions YOU can take

1.

Email your comments to BOA staff liaison, Leane Heldenfelds, Leane.Heldenfels@austintexas.gov

2. Please reference the case number: C15-2015-0147 and amphitheater address: 8901 SH 71 West.

3. Ask the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.

4. Ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA.

A hearing on the site plan and building permit appeals is on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. The neighborhoods have asked to postpone the hearing until December 9. We will update you later when the hearing date is set.

Heldenfels, Leane

From: [REDACTED]
Sent: Thursday, November 05, 2015 11:26 PM
To: Heldenfels, Leane
Subject: Case #C15-2015-0147 re: 8901 SH 71 West

Re: Case # C15-2015-0147
LifeAustin Amphitheater at 8901 SH 71 West

As residents of the Covered Bridge subdivision, we are requesting that the appeals filed by Hill Country Estates HOA and Covered Bridge POA be granted and that Staff be directed to forward the TUP appeal filed by Hill Country Estates HOA and Covered Bridge POA.

We attended many meetings regarding the proposed LifeAustin (Dream City) church and amphitheater and were astounded when we learned of the City's approval of the building permit for the amphitheater. The manner in which the permit was approved did not allow us to express our opinions and concerns about the loose interpretation of "religious assembly" and the non-specificity of restrictions (e.g., type of events, number of events, hours of events) imposed upon the use of the amphitheater. We feel that the zoning code was not enforced in allowing this structure to be built, nor is it now being enforced as far as special use/sound permits.

We are concerned about the amplified sound from the amphitheater. We are concerned about increased traffic that large events bring to an already stressed Highway 71 and increased cut-through traffic in our neighborhood. Having seen cars parked on the shoulder of Highway 71 during church events even before the amphitheater was built, we are concerned about the safety issues created by insufficient parking to accommodate large events. We are concerned about the effect on our quality of life and about negative impact on our property values.

We feel that the City has shown a lack of integrity and lack of respect for us as citizens in its failure to enforce zoning codes, the unorthodox manner in which the building permit was approved and the denial of our due process. Therefore, we sincerely hope that the appeals filed by Hill Country Estates HOA and Covered Bridge POA are granted and that Staff is directed to forward the TUP appeal filed by Hill Country Estates HOA and Covered Bridge POA.

Christie & Ted Claussen
7401 Black Mountain Dr.
Austin, TX 78736

Heldenfels, Leane

From: Alan Bennett
Sent: Thursday, November 05, 2015 9:49 PM
To: Heldenfels, Leane
Subject: case number: C15-2015-0147 / 8901 SH 71 West, ATX

Dear Ms. Heldenfels,

As a homeowner and resident of Hill County Estates, I would respectfully ask that the Board of Adjustment to **GRANT** the appeals filed in the above-referenced case and property, by the Hill Country Estates HOA and the Covered Bridge POA.

I would also ask that the BOA direct its staff to forward the TUP appeal filed by the Hill County Estates HOA and the Covered Bridge POA, to the BOA.

My house is across from the amphitheater in question, separated by a single line of trees, and an open field. I doubt there is anyone in either of our two neighborhoods who hears the amphitheater any more than me and my family. I understand the noise of the highway, but I choose to live near the highway; I did not choose to move into a neighborhood with an amphitheater (the amphitheater came afterwards). I do not choose to listen to their music till 10:00 PM even though I'm *inside* my house. I do not wish to have the property value of my house diminished because of the church's music, etc...

Yet Please understand; *I support the church, I support their cause, their mission, and what they do.* It's hard to argue with their purpose and mission, and I don't. In fact, I'm not even one of the ones who think their amphitheater should be enclosed, torn down, etc... All I'd ask, is that they turn the music down to where we don't have to hear it.

As a lawyer, I'm puzzled by the process by which their permit was granted, and how they are now able to consider themselves "a residence" for purposes of playing loud music, i.e., a noise complaint is treated just

like a neighbor throwing a party. I'd love for the church to be considered a "residence," if they paid property taxes like everyone else does with their "residence."

I would welcome you or any member of the BOA to come to my house during one of their concerts (let me know when you're coming and I'll have plenty of adult refreshments, I'll even cook burgers and hotdogs and you can envision what a cookout at my house would be like during a concert.

I'm puzzled how a church can build an amphitheater in a residential neighborhood, claim it's to be used for "religious assembly," and then charge admission to The Gatlin Brothers. It certainly looks (and sounds) like a commercial venue. OK, let's be honest, if they had Paul McCartney, or Meatloaf coming to play, I wouldn't be complaining (I have a wide range of musical tastes), but they don't.

I think the lawsuit is reasonable, I think the concerns of the HOA are reasonable. All we really need is for someone to come out and listen to a concert at full volume out here.

Thank you for your time and consideration, and while you may be thinking that I'm joking about have a cookout for the BOA, I'm not. Alan Bennett

Heldenfels, Leane

From: [REDACTED]
Sent: Thursday, November 05, 2015 8:39 PM
To: Heldenfels, Leane
Cc: darryl@weichertlaw.com
Subject: RE: BOA Case Number: C15-2015-0147

Regarding Case Number C15-2015-0147, Life Austin Amphitheatre, 8901 SH 71 West, Austin, TX 78735:

I strongly urge the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.

I have been following the facts of this case and am surprised at the denial of due process and disregard for regulations and laws by the City of Austin Planning and Zoning Department.

I think the City of Austin Planning and Zoning Department has undermined the public's trust in this matter. This issue will not 'blow over' or just 'go away'.

The approval of this project was highly irregular and it is time for the BOA to take this matter into consideration in an even-handed and lawful manner.

Thank you,

John Lethco

6709 Debco Dr., Austin, TX 78749

Heldenfels, Leane

From: Darryl Pruet [REDACTED]
Sent: Thursday, November 05, 2015 5:54 PM
To: Heldenfels, Leane
Subject: FW: Case number: C15-2015-0147; Address: 8901 SH 71 West
Attachments: LifeAustin Amphitheatre OHAN Resolution3.pdf; LifeAustin Amphitheatre OHAN Resolution2.pdf; LifeAustin Amphitheatre OHAN Resolution.pdf

Ms. Heldenfels:

Please forward these comments and resolutions to the members of the Board of Adjustment.

My name is Darryl Pruett. I am the President of OHAN, an umbrella group of nearly 40 neighborhood associations in the Oak Hill area.

Attached you will find the multiple resolutions OHAN membership has adopted in opposition to the amplified sound outdoor amphitheater being located in a residentially-zoned area.

As you can see, the neighborhoods' input has been ignored for at least 7 years (since 2008). As it stands right now, staff's erroneous interpretation has led to outdoor assembly in a residentially-zoned area. Plus, the outdoor assembly includes amplified sound. As a result, numerous homes are impacted, with multiple families being subjected to unwanted sounds in their own home, thus resulting in harm to the families and leading to a reduction in their property values because of this inappropriate and incompatible use.

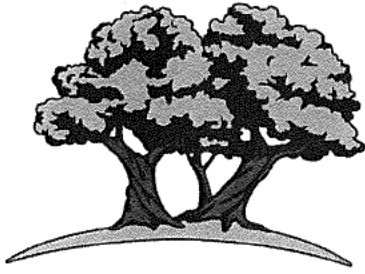
There has never been, not once, any hearing at which the public could provide input on whether outdoor assembly with amplified sound would be appropriate in a residentially-zoned area.

The City has taken the position that Hill Country Estates (one of OHAN's member organizations) failed to appeal staff's email "determination" in 2008. The problem with that argument, of course, is that staff's email was private and was not revealed to Hill Country Estates (or to anyone, for that matter) in 2008.

As set forth in the Court of Appeals' decision, this Board, not City staff, must decide whether Hill Country Estates has standing to appeal the matters set forth in their appeals.

OHAN urges the Board to: (a) find that Hill Country Estates has standing to appeal the various decisions that are the subject of its appeals; (b) approve the appeals; and (c) reverse the administratively approved site development permit for the outdoor amphitheater and any related permits.

Darryl W. Pruett
The Weichert Law Firm
3821 Juniper Trace, Suite 106
Austin, Texas 78738
(512) 263-2666 ext. 103
Fax: (512) 263-2698
[REDACTED]



OAK HILL ASSOCIATION OF NEIGHBORHOODS

Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

May 13, 2015

WHEREAS, in 2008 OHAN passed a resolution (hereinafter "the 2008 Resolution") urging PromiseLand West Church (now "LifeAustin Church", hereinafter "the Church") to give full weight to the various options suggested by Hill Country Estates, Westview Estates, and Covered Bridge (the three neighborhoods in closest proximity to the Church's then-proposed development on Highway 71, hereinafter "the Neighborhoods"); and

WHEREAS, the 2008 Resolution further supported the Neighborhoods' position (a) in opposition to the proposed outdoor amphitheater as a host site for events with amplified sound, and (b) in trying to reduce the adverse impact on their residents' lives by the Church's proposed development; and

WHEREAS, in 2011, the site development permit was issued in error and Hill Country Estates Homeowners Association filed an appeal to the Board of Adjustment regarding the administrative approval of a site development permit for the construction of a large outdoor amphitheater on land zoned Rural Residential ("BOA Appeal"); and

WHEREAS, Hill Country Estates have never had their appeal heard, the BOA Appeal has never been forwarded to the Board of Adjustment and there has never been any public hearing regarding the approval of the site development permit for the construction of the large outdoor amphitheater; and

WHEREAS, City staff decided that Hill Country Estates did not have standing to appeal the administrative approval of the site development permit for the outdoor amphitheater and refused to forward the BOA Appeal to the Board of Adjustment, as required by state law and the City Code; and

WHEREAS, in 2012, Hill Country Estates and Covered Bridge filed suit against the City and Greg Guernsey regarding the administrative approval of the outdoor amphitheater and the refusal to forward the BOA Appeal to the Board of Adjustment ("Lawsuit"); and

WHEREAS, the City filed a motion to dismiss the Lawsuit on the grounds that Hill Country Estates and Covered Bridge did not have standing to challenge the administrative approval of the outdoor amphitheater; and

WHEREAS, after the trial court ruled in favor of the City to dismiss the Lawsuit, Hill Country Estates and Covered Bridge appealed the trial court ruling; and

WHEREAS, on May 7, 2015, the Court of Appeals ruled that the Board of Adjustment must decide on whether Hill Country Estates has standing to have the BOA Appeal heard by the Board of Adjustment; and

WHEREAS, the Church recently applied to the City of Austin for an Outdoor Music Venue sound permit (City Case # SO-2015-0174) to allow amplified sound at events held at the outdoor amphitheater; and

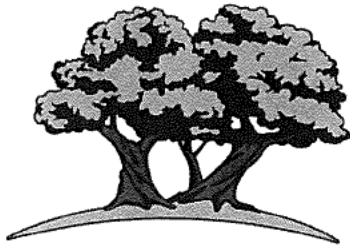
WHEREAS, at the request of Hill Country Estates and Covered Bridge, representatives from the Neighborhoods and the Church met recently regarding the sound permit application and the proposed use of the outdoor amphitheater.

NOW, THEREFORE, BE IT RESOLVED that OHAN urges the City to forward the BOA Appeal to the Board of Adjustment prior to the approval of any sound permit for the outdoor amphitheater; and

BE IT FURTHER RESOLVED that OHAN opposes the issuance of the Outdoor Music Venue sound permit (City Case # SO-2015-0174) and OHAN urges the City to revoke the site development permit as to the outdoor amphitheater.

Adopted the 13th day of May, 2015.

/s/ Darryl W. Pruett
Darryl Pruett, OHAN President



Neighbors in service to southwest Travis County

P.O. Box 90906, Austin, TX 78709-0906

ohan.org

Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

September 10, 2014

WHEREAS, PromiseLand West Church (hereinafter "the Church") has purchased and partially developed a tract of land located at 8901 West SH 71 ("Church Property"); and

WHEREAS the Church Property is zoned rural residential (RR); and

WHEREAS, Hill Country Estates, Westview Estates, and Covered Bridge (all being members of OHAN, hereinafter "the Neighborhoods") are the three neighborhoods in closest proximity to the development (the "Dream City" development); and

WHEREAS, the Church's master plan calls for various structures including a Worship and family ministries building, parking facilities, and a large outdoor amphitheater with amplified sound capabilities; and

WHEREAS, since 2007 the Church has promoted the outdoor amphitheater as a venue for concerts, ballets and other forms of non-religious assembly and entertainment; and

WHEREAS, the Neighborhoods have not opposed the construction of enclosed buildings for worship services or religious education but the Neighborhoods have opposed the construction of the outdoor amphitheater since 2007; and

WHEREAS, in August 2008, OHAN adopted a resolution in full support of the Neighborhoods' efforts to reduce adverse impacts of the proposed Dream City development, including the outdoor amphitheater; and

WHEREAS, in October 2011 the Church obtained a site development permit that included a large outdoor amphitheater ("Development Permit"); and

WHEREAS, the Church has rebranded itself and the Dream City project as "Austin Life;" and

WHEREAS, in October 2011, City staff required the Church to record a restrictive covenant that, among other things, purported to expand the definition of religious assembly to include the very activities that the Church had been promoting for the outdoor amphitheater; and

WHEREAS, the Hill Country Estates and Covered Bridge associations timely filed an appeal to the Austin Board of Adjustment ("ABOA") challenging the legality of the administrative approval of the outdoor amphitheater under the City's Land Development Code ("Appeal"); and

WHEREAS, City staff refused to forward the Appeal to the ABOA and ABOA has never held a public hearing on the Appeal; and

WHEREAS, in 2012, the Hill Country Estates and Covered Bridge associations filed a lawsuit against the City of Austin and Greg Guernsey, asserting among other claims, that the administrative approval of the outdoor amphitheater violated the City's zoning regulations and the refusal to forward the Appeal to the ABOA violates state law; and

WHEREAS, after the City approved the initial building permit for the outdoor amphitheater in 2013, the Hill Country Estates and Covered Bridge associations timely filed an appeal to the ABOA challenging the legality of the initial building permit under the City's Land Development Code; and

WHEREAS, the Church has filed an application with the City for a one year extension of the Development Permit that includes the outdoor amphitheater (SP-2011-185C(XT)); and

WHEREAS, the one year extension to the Development Permit has been administratively granted; and

WHEREAS, the Hill Country Estates and Covered Bridge associations have filed an appeal to the granting of the one year extension of the Development Permit to the Planning Commission ("Extension Appeal"); and

WHEREAS, Section 25-1-416 of the City Code authorizes the revocation of a released site plan if it is determined that site plan was released in error or the development does not comply with Title 25 of the City Code.

NOW, THEREFORE, BE IT RESOLVED, that OHAN continues to fully support the Neighborhoods in their efforts to stop the adverse impacts on their residents' lives by the outdoor amphitheater; and

BE IT FURTHER RESOLVED that OHAN supports the Extension Appeal; and

BE IT FURTHER RESOLVED that OHAN urges the Austin Planning Commission to consider and determine whether the Development Permit and Restrictive Covenant comply with Title 25 of the City Code before taking any action regarding the Extension Appeal; and

BE IT FURTHER RESOLVED that if the Extension Appeal is brought to the City Council for a hearing, OHAN urges the Austin City Council to consider and determine whether the Development Permit and Restrictive Covenant comply with the Title 25 of the City Code before taking any action regarding the Extension Appeal.

Passed by unanimous consent on September 10, 2014.

Jim Schissler, President
Oak Hill Association of Neighborhoods



Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

August 6, 2008

WHEREAS, PromiseLand West Church (hereinafter "the Church") has purchased a tract of land on Highway 71 for its proposed "DreamCity" development; and

WHEREAS the Church's tract is currently zoned RR (rural residential); and

WHEREAS, Hill Country Estates, Westview Estates, and Covered Bridge (all being members of OHAN, hereinafter "the Neighborhoods") are the three neighborhoods in closest proximity to the DreamCity development; and

WHEREAS, the Church currently has approximately 800 members and hopes to grow to over several thousand members; and

WHEREAS, the proposed DreamCity master plan calls for various structures including a Phase One Worship and family ministries building, a future main worship center, parking facilities, secondary family ministry structures, and an outdoor amphitheatre with amplified sound capabilities; and

WHEREAS, the Church's DreamCity development calls for one avenue of public ingress and egress directly onto Highway 71; and

WHEREAS, representatives from the Neighborhoods and the Church have met several times to discuss plans for the proposed development and concerns voiced by residents of the Neighborhoods; and

WHEREAS, the two most overriding concerns from the Neighborhoods relate to sound and light from events held at the outdoor amphitheatre, and traffic/safety issues;

NOW, THEREFORE, BE IT RESOLVED: that OHAN urges the Church to give full weight to the various options suggested by the Neighborhoods; and

BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position in opposition to the proposed DreamCity outdoor amphitheatre as a host site for events with amplified sound; and

BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position that a center turn lane and acceleration lanes must be in place on Highway 71 prior to the construction of any proposed DreamCity Phase II improvements; and



Neighbors in service to southwest Austin.ohan.org

BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position that access onto Mowinkle Street must never be used to furnish ingress and egress for the church and Church activities, and OHAN urges the Church to abide by its stated commitment to restrict any such traffic flow to service of the parsonage and for emergency vehicles; and

BE IT FURTHER RESOLVED: that OHAN fully supports the Neighborhoods in their efforts to try to reduce the adverse impact on their residents' lives by the proposed DreamCity development.

Adopted this 6th day of August, 2008.

Dwain K. Rogers Jr

Dwain Rogers, OHAN President

Heldenfels, Leane

From: [REDACTED]
Sent: Thursday, November 05, 2015 5:50 PM
To: Heldenfels, Leane
Subject: LifeAustin: 8901 SH 71 West, case number: C15-2015-0147

We live on Telluride Trail, not far from the amphitheater.

We are firmly opposed to allowing amplified sound outdoors at this site. Please include our position in your considerations.

Andy Salmon and Kim & James Harrigan
6711 Telluride Trail 78749

Sent from my iPad

Heldenfels, Leane

From: [REDACTED]
Sent: Thursday, November 05, 2015 5:01 PM
To: Heldenfels, Leane
Subject: from a concerned citizen re: Life Austin Amphitheater

Dear Ms. Heldenfels,

We are so grateful that at last, someone will listen to us regarding the travesty that has happened in our neighborhood, vis a vis the Life Austin Amphitheater. We are a peace-loving neighborhood, zoned "rural residential," yet, the amphitheater seems to be a commercial venue, with accompanying crowds, noise, and lights.

The problem is: Director Greg Guernsey approved the outdoor amphitheater as a religious assembly use. He said the zoning code did not make a distinction between indoor and outdoor religious assembly. This is incorrect. Section 25-2-921(C) of the zoning code **prohibits all outdoor assembly** (public, historic and religious), including benefits, festivals and other events likely to attract a mass gathering of people in the RR to SF-3 zoning districts. The LifeAustin property is zoned RR.

Section 25-2-921(C) of the zoning code authorizes the City Building Official to issue temporary use permits for outdoor gatherings of up to 50 people in SF-4 and less restrictive zoning districts. To have a gathering of more than 50 people, the property must be located in a non-residential zoning district.

The noise level of the concerts is unbelievable. Many of us have been bombarded by incredibly loud music, such that people can't hear their TVs over the music coming into their homes, and kids aren't able to go to sleep because of the loud noise.

Here are some of our concerns:

- Staff didn't have the authority to administratively approve LifeAustin's construction of an outdoor amphitheater.
- Plays, ticketed concerts and other forms of entertainment are NOT "religious assembly."
- The city should enforce the zoning code as it is plainly written.
- Staff's interpretations set a precedent to allow all church grounds to become outdoor entertainment venues.
- If the code says non-residential zoning is required to have an outdoor event with more than 50 people, how can staff approve gatherings of 1,500 people in the RR zoning district?
- The zoning code requires a "conditional use permit" (and public hearings) to be obtained before property owners can hold graduations, theatrical plays/productions, meetings, concerts, recitals, ballets, family movie nights, and other events in an event center. This requirement has been ignored by staff.
- The amphitheater should be enclosed.
- Rural Residential zoning means a rural and quiet neighborhood.
- The LifeAustin outdoor amphitheater is not a residence and it is not quiet.
- Loud concerts on school nights are bad for school aged children.
- Harms property values. How would you feel if you could hear concert music inside your home?
- The approval of the outdoor amphitheater violates the letter and the spirit of the zoning code.

We have been attempting to be heard on this for the past 7 years. Thank you so much for hearing out [REDACTED] and supporting us in rectifying this unthinkable situation. We don't understand how this happened, and we want to at least have them enclose the amphitheater ~~as it does not wreck our~~ neighborhood and all our property values. We are hoping to be heard by the Board of Adjustment as well. Apparently Pastor Randy Phillips was aware that he was taking a risk building the amphitheater and knew that at some point, he may be prevented from using it.

Thank you so much for your assistance with this.

Sincerely,

Phyllis Light, Ph.D., a resident of Hill Country Estates, right next to LifeAustin.

(Case reference number: C15-2015-0147 and amphitheater address: 8901 SH 71 West)

Heldenfels, Leane

From: Robyn [REDACTED]
Sent: Thursday, November 05, 2015 4:20 PM
To: Heldenfels, Leane
Subject: [Released] Life Outdoor Amphitheatre

In reference to case number: C15-2015-0147 and the amphitheater at 8901 SH 71 West, I am writing to ask the Board of Adjustment to **grant** the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.

Also, please have the Board of Adjustment direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA.

Sincerely,

Robyn L. Lively

Heldenfels, Leane

From: [REDACTED]
Sent: Thursday, November 05, 2015 11:10 AM
To: Heldenfels, Leane
Subject: case number: C15-2015-0147

Ms. Heldenfels,

I am writing in regards to the BOA hearing for case number: C15-2015-0147, the appeal hearing for the request that city code be followed in the case of the outdoor amphitheater at LifeAustin Church located at 8901 SH 71 West.

I support the Hill Country Estates HOA and Covered Bridge Property Owners Association as well as residents in surrounding neighborhoods whose quality of life and property values are being diminished by the excessive noise that is often and regularly produced by events at the LifeAustin amphitheater.

The amphitheater is a nuisance to the surrounding neighborhoods and its use is incongruent with the intent and spirit of its zoning.

I live within one mile of the amphitheater and am often disturbed by the noise from these events. I am also a Realtor who focuses on this area and it is clear that buyers who are aware of the existence of the amphitheater and/or the noise disturbances are hesitant to value the homes in the area as highly as they would if there were not an outdoor concert venue at LifeAustin.

I strongly urge the City of Austin to consider the concerns and complaints about LifeAustin's use of the amphitheater and hold firm all applicable regulations to protect the quality of life and property values of the surrounding neighborhoods.

Thank you,

Doug
Vogelsass

Heldenfels, Leane

From: [REDACTED]
 Sent: Thursday, November 05, 2015 12:07 AM
 To: Heldenfels, Leane
 Subject: Life "church"

My name is Ed Reynolds.

I service the instruments of many top musicians in this town, nationwide and world-wide. Been at that trade for 35 years.

I like loud music. I go out to HEAR loud music in clubs like the Saxon Pub or the Continental.

I also PLAY loud music, in a music room I built on my residence.

None of my neighbors ever hear that, because I built my music space so as not to destroy the quality of life of my neighbors.

That, of course, is in stark contrast to what Life Austin "church" does.

The noise from LA "church" DESTROYS the quality of life of it's neighbors, because they have CHOSEN to trample on that quality of life, by failing to design their (for-profit) venue to contain that sound, and/ or design a sound system to "rock" their audiences, while also RESPECTING their neighbors.

As a person who has helped design sound systems, I can assure you that it's "not rocket science" to do that. As a person who got co-operation from ATT&T re the noise from their generators on Circle drive, (and got it quieted down) I can say that folks CAN build things do contain/ minimize their noise. Cost Is NOT excessive.

By the way: those neighbors who are being sonically assaulted were here LONG before LA "church". Those neighbors pay the taxes which support this city and those who preside in / are employed by various offices.

THOSE folks, whop are intent upon preserving the quality of life in their neighborhoods are the folks you need to be listening to. THEY are the "backbone" of true community spirit, whether LA "church" advertises itself as such, or not.

In my personal view, and knowing what it takes to manage sound, LA "church" is uncaring as to it's effect on it's neighbors, and possibly corrupted by the prospect of riches.

I am also VERY impressed that not one of the folks who have been assaulted by the noise from LA church has wished for it's demise, and that they ONLY want the peace and quiet BACK ... Peace and quiet that they HAD before LA" church" spewed forth it's unjustifiable degradation of the quality of life that they call "spiritual". So; Kudos to those assaulted, and a severe "shame on you" to the insensitive / myopic/ greedy, who have no respect for people's serenity and peaceful existence.

You might think that I'd be on the side of LOUD Music, since I assist folks who do that for a living.

However; I am MORE on the side of folks who have worked hard for many years to buy the homes they purchased FOR peace and quiet, and FOR a neighborhood that is NOT slated to become the new "6th street west".

The noise from LA "church" is taking the whole area in that unwanted, unwelcome and undesirable direction. I CAN HEAR THE NOISE FROM LA "church" in my yard, ONE MILE AWAY, as the crow flies. THAT is not right!

Regardless of the label of "church" or not; this is NO different than Senor Buddy's (Thankfully gone) that visited it's noise upon Westview estates without consideration or conscience.

55 of us signed a petition objecting to that.

Bottom line: The folks that "make the rules" need to know that what makes Austin "a cut above" so far as a place to live is the QUALITY OF LIFE. ... THAT attracts folks.

Re that : LOUD UNWANTED NOISE in neighborhoods that were here LONG BEFORE noise from places like LA "church" destroy that quality of life, and that kind of thing needs to be stopped / prohibited.

AND; you can BE ASSURED that folks who sell their properties to escape the noise from LA : "church" will suffer a LARGE loss of market value re their homes as a DIRECT result of the excessive noise from LA "church".

The point is this: If present statutes do not support the residents, the taxpayers, then those statutes need to be amended in favor of those residents: The BACKBONE of Austin.

If those who "make the rules" cannot respect Austinites, and support the base of their own support, then perhaps they need to be "amended" too.

By the way; I have volunteered / participated for NO money to help w/ the cleanup after Rita and Katrina.

I did that with a church group. I'm NOT anti-church.

Also: I have a roof leak, a \$2000.000 water bill from a busted line, a dead pool pump etc. For me to devote my time to writing this means I am serious in support of my neighbors, and in support of Austin in general.

I personally can only hear the noise from LA "church" a mile away, so it's not a big deal to me. But if I let my neighbors suffer (in the extreme) at the hands of for-profit concert promoters, (like I and my neighbors suffered re Senor Buddy's) then who am I?

And who are you?

I encourage all to step up to the plate on this issue.

Ed Reynolds

Heldenfels, Leane

From: Jeanne [REDACTED]
Sent: Monday, November 09, 2015 10:09 AM
To: Heldenfels, Leane
Cc: Kirk, Jeanne
Subject: LifeAustin: 8901 SH 71 West - Case number: C15-2015-0147

Importance: High

Dear Ms. Heldenfels,

I am contacting you in your capacity as staff liaison for the Austin Board of Adjustment (BOA). I have been a Covered Bridge community resident since 2008 and have lived through years of frustration with the intrusive behavior of Promiseland West/Life Austin Church and their determination to install an open air music venue with permanent sound amplification and a heavy schedule of events, including late night concerts, in the middle of our Rural Residential (RR) zoned neighborhood. This intrusion was inappropriately and illegally enabled and abetted by the City of Austin Planning and Zoning Department and its director, Greg Guernsey, refusing to forward our appeals of their decisions to the BOA, as required by law.

The Covered Bridge and Hill Country Estates neighborhoods have suffered with this intrusion for years. The neighborhoods have had to spend large sums of money trying to stop the building of the amphitheater and to contest the vacillating decision and obstruction presented by Mr. Guernsey and other city staff. We have had multiple meetings with the church and offered many reasonable options, none of which were adopted. Now that the church has proceeded with building and operating this illegal music venue, residents in these neighborhoods and others are having to deal with these intrusive sounds in their homes with doors and windows closed!

Please help us make this right by the following requests:

- I ask the Board of Adjustment to GRANT the appeals filed by Hill Country Estates HOA and the Covered Bridge POA
- I ask the Board of Adjustment to direct city staff to forward the Temporary Use Permit appeal filed by Hill Country Estates HOA and Covered Bridge POA to the BOA
- The hearing on the site plan and building permit appeals is currently on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. I ask that the request by the neighborhoods to postpone the hearing until December 9, 2015 be granted

Thank you for your assistance!

Jeanne

Jeanne C. Kirk
Covered Bridge
8601 Foggy Mountain Drive, Austin TX 78736
[REDACTED]

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 9:27 PM
To: Heldenfels, Leane
Subject: case number C15-2015-0147

Dear Ms. Heldenfels;

I am writing in regard to case number C15-2015-0147, the amphitheater at the Life Austin Church, 8901 SH 71 West.

First of all I would like to request that the hearing before the Board of Adjustment scheduled for November 9, 2015 be postponed until December 9, 2015.

Next I want to urge the Board of Adjustment to grant the appeals filed by the Hill Country Estates and Covered Bridge neighborhoods. The noise generated by the amphitheater has caused disturbance, headaches, and has deprived our neighborhoods of the peace and tranquility that brought us here. The inconsideration and disrespect shown by the operator of this amphitheater towards us is very wrong.

Please correct this wrong by granting the appeals.

Thank you.

Gladys Baumel

lsbgbb-glad@yahoo.com

Heldenfels, Leane

From: Leonard Baumel
Sent: Sunday, November 08, 2015 9:09 PM
To: Heldenfels, Leane
Subject: case number C15-2015-0147

Dear Ms. Heldenfels;

I am writing in regard to case number C15-2015-0147, the amphitheater at the Life Austin Church, 8901 SH 71 West.

First of all I would respectfully request that the hearing before the Board of Adjustment scheduled for November 9, 2015 be postponed until December 9, 2015.

Next I would like to strongly urge the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA. The presence of the highly amplified sound that is blown in every direction by the varying winds and atmospheric conditions has disrupted the lives of neighbors and neighborhoods on all sides of the amphitheater. When people can hear the amphitheater from the inside their homes, the situation becomes intolerable. This amphitheater was built in defiance of common sense due to an erroneous interpretation of the City's zoning ordinances.

We beg the Board of Adjustment to accept our appeals and rectify the injustice that has been done to us and our neighbors.

Thank you.

Leonard Baumel

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 8:55 PM
To: Heldenfels, Leane
Subject: BOA hearing case number: C15-2015-0147 - Covered Bridge Property Owners Association and Hill Country Estates HOA

To: Leane Heldenfelds

Re: LifeAustin outdoor amphitheater, 8901 SH 71 West, Austin, Texas

Case number: C15-2015-0147, and

I support the Covered Bridge Property Owners Association, the Hill Country Estates HOA and the residents in surrounding neighborhoods who oppose LifeAustin's outdoor amphitheater. We are asking that the City of Austin's Regulations and Codes be followed now, as it was apparently ignored in the past. The surrounding neighborhoods quality of life has been disrupted by the noise from the entertainment events of LifeAustin's professionally engineered, high-powered amplified outdoor venues. Nearby neighborhoods such as Westview Estates, the Thomas Springs neighborhood, Blue Hill neighborhood and others are also being impacted.

Many moved to this area many years ago to avoid the noise and activity of dense city life. The above mentioned neighborhoods did not move to the area after the building of the LifeAustin's outdoor amphitheater, LifeAustin built in the existing neighborhood instead. These previously established neighborhoods now have no choice but to accept, move, or put up with this disruption and hope soon the City of Austin will consider their staff's previous failure to completely follow the City Codes and Regulations and reverse their previous decisions.

Possibly an enclosed structure can hopefully solve the majority of the LifeAustin noise issue. Therefore, I urge the City of Austin to consider

I01/527

the surrounding neighborhoods concerns and complaints regarding the above issue.

Thank you very much.

Janice Faries

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 8:06 PM
To: Heldenfels, Leane
Subject: Amphitheater - Case # C15-2015-0147

Dear Leane Heldenfels,

My wife and I are residents of the Hill Country Estates community at 6701 Midwood Pkwy. We have been members of our community for the past 18 years and love our home and neighbors. Due to the noise originating from the amphitheater located at 8901 SH 71 West, our lives have been disrupted. Objections to the noise generated by the sound checks, shows, and concerts performed at this amphitheater have been filed with the city of Austin via numerous 311 telephone calls. We wish to reference the current case number, C15-2015-0147, to ask the Board of Adjustment to grant the appeals filed by Hill Country Estates Home Owners Association and the Covered Bridge Property Owners Association. We also ask that the Board of Adjustment to direct staff to forward the Temporary Use Permit appeal filed by the Hill Country Estates Home Owners Association and the Covered Bridge Property Owners Association.

Thank you for your assistance in this matter.

Sincerely,
Tim and Jayne Wooten

This email has been checked for viruses by Avast antivirus software.
[REDACTED]

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 6:54 PM
To: Heldenfels, Leane
Subject: Ref; case C15-2015-0147 LifeAustin

I was writing to ask the Board of Adjustment to to grant the appeals filed by Hill Country Estates HOA and Covered Bridge POA..

In addition I ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country Estates HOA and Covered Bridge POA to the BOA.

I moved to Covered Bridge in Mid 2009 after retirement. I have spent a life time defending due process as Police officer. We were not informed of of any attempt to build a Amphitheater for any reason as there was no public knowledge. The Austin City Staff failed to give public notice. This is my retirement home and I do not want the possibility of our peace being deserted by concerts for any purpose and I am a Christian. As my neighbor in Country Estates said " I don't care if it is Silent Night, if I can hear it in my home it is not acceptably."

Thanks for your attendance to this matter.

Phillip W George
Police Sgt. Retired
7515 Roaring Springs Dr
Austin, TX. 78736

512-810-1289

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 6:47 PM
To: Heldenfels, Leane
Subject: Appeals for Cq5-2015-0147
[REDACTED]

Re: case number: C15-2015-0147 and amphitheater located 8901 SH 71 West.

We live 2 miles from where the concerts are held and we can hear the thumping bass, like when a car has a loud stereo and drives by our house. But the thumping doesn't "drive away". It's constant during a show.

Board of Adjustment, please grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.

And direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA.

Thank you,
Gina Lovelace
7005 Chinook Dr.
Austin, TX 78736

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 4:52 PM
To: Heldenfels, Leane
Subject: Fwd: [covered_bridge] INFORMATION RE: BOA HEARING ABOUT LIFE AUSTIN OUTDOOR AMPHITHEATER

Hi

I am writing to express my concern over the Life Austin amphitheater, the way it was approved and the ongoing deceptive actions taken by city staff to avoid any retraction of permits for the outdoor event center.

Having a home within view of the facility isn't an issue for me. What is an issue is the noise nuisance created by it. We didn't move to the nuisance, but rather it came to us. The facility isn't for religious expression or practice. It is being used for commercial purposes. We have called 311 every time they have a concert because we not only hear it while trying to relax outside, but also while we are inside our home.

All of the points listed below are in line with our concerns and I ask the BOA to retract any permits unfairly provided to this facility. They are not acting in good faith and are not being a good neighbor, as promised. If they want to have services outside, there is no need to have evening concerts not at a decibel level that disturbs the neighborhoods surrounding them.

Thanks

Please reference: 1) the case number: **C15-2015-0147**, and
2) the address for LifeAustin: **8901 SH 71 West**

If you can, please send your email before November 8, 2015 so the BOA members will know on November 9th how many people are interested in the appeal. Please do not attempt to communicate directly with any member of the BOA. All communications must be sent to Ms. Heldenfels.

Background Facts

The following is a very brief description of how the outdoor amphitheater was administratively approved without any public hearings, and how City staff blocked all attempts to allow neighbors to appeal the unprecedented approvals:

Site Plan Approval

In October 2011, City staff administratively approved the site plan submitted by PromiseLand Church West (aka Dream City and now known as "**LifeAustin Church**") that included the construction of a 1,500 seat outdoor amphitheater on property zoned Rural Residential.

- Staff interpreted the “religious assembly” use to include outdoor religious assembly and an outdoor amphitheater as principal uses under religious assembly.
- Staff interpretation also expanded “religious assembly use” to include musical and theatrical performances as well as benefit events at which tickets can be sold.
- Staff’s “interpretation” was made in a December 2008 private email between Greg Guernsey, Director of the City’s Neighborhood Planning & Zoning Department, to a representative of LifeAustin Church. Neighbors first learned of the 2008 email in 2011.
- Hill Country Estates HOA (HCE HOA) filed an appeal objecting to Staff’s interpretation in October 2011.
- Staff refused to send appeal to BOA claiming the appeal was not “timely.” Staff said the “interpretation” had to be appealed within 20 days of when it was made (December 2008), although no notice of the “interpretation” was made to anyone other than LifeAustin.
- HCE HOA and Covered Bridge Property Owners Association (CB POA) sued Director Guernsey and the City to require them to send appeal to the BOA as required by State law and City code, and to overturn interpretations that exceeded staff authority. The neighborhood associations did not sue LifeAustin.
- City filed motion to dismiss lawsuit asserting the neighborhoods have “no standing” to sue the City and Guernsey.
- Trial court granted City’s motion to dismiss lawsuit on technical grounds in May 2013. Neighborhoods appealed to Court of Appeals.
- In May 2015, Court of Appeals overturned trial court decision as to HCE HOA. Court of Appeals’ opinion said that trial court cannot decide standing to sue until BOA first decides standing issue.

City’s Approval of Outdoor Amphitheater Building Permit

- HCE HOA and CB POA filed appeal of City’s and Guernsey’s “interpretation” approving a building permit for LifeAustin’s outdoor amphitheater.
- Staff refused to forward building permit appeal to BOA.
- In late 2012, staff sought an amendment to City Code Section 25-2-921(C) to authorize the building official to issue temporary use permits (TUP) in all residential zoning districts for outdoor benefits and festivals held on property used for education and religious assembly purposes.

· In November 2013, staff issued a new interpretation of Section 25-2-921(C) in a memo that said, due to non-enforcement, this code section no longer prohibits outdoor benefits and festivals on church and school property.

· HCE HOA and CB POA filed appeal of City's and Guernsey's "interpretation" of the TUP in December 2013 ("TUP Appeal").

· Staff refused to forward TUP Appeal to BOA claiming the November 2013 interpretation did not contain any "appealable" decisions.

· Since November 2013, outdoor benefits and festivals held on property used for education and religious assembly purposes has been allowed as interpreted in the November 2013 memo.

Two of Three Appeals Now Allowed to Proceed

· Staff agrees to send site plan and building permit appeals to BOA but not TUP Appeal.

Primary Appeal Issues for Site Plan and Building Permit Appeals

· Director Guernsey approved the outdoor amphitheater as a religious assembly use. He said the zoning code did not make a distinction between indoor and outdoor religious assembly. This is incorrect. Section 25-2-921(C) of the zoning code **prohibits all outdoor assembly**(public, historic and religious), including benefits, festivals and other events likely to attract a mass gathering of people in the RR to SF-3 zoning districts. The LifeAustin property is zoned RR.

· Section 25-2-921(C) of the zoning code authorizes the City Building Official to issue temporary use permits for outdoor gatherings of up to 50 people in SF-4 and less restrictive zoning districts. To have a gathering of more than 50 people, the property must be located in a non-residential zoning district.

Some Areas of Concern

· Staff did not have the authority to administratively approve LifeAustin's construction of an outdoor amphitheater.

· Ticketed concerts, plays and other forms of entertainment are not religious assembly.

· City should enforce the zoning code as it is plainly written.

· Staff's interpretations set a precedent to allow all church grounds to become outdoor entertainment venues.

· If the code says non-residential zoning is required to have an outdoor event with more than 50 people, how can staff approve gatherings of 1,500 people in the RR zoning district?

The zoning code requires a "conditional use permit" (and public hearings) to be obtained before property owners can hold graduations, theatrical plays/productions, meetings, concerts, recitals, ballets, family movie nights, and other events in an event center. This requirement has been ignored by staff.

- The amphitheater should be enclosed.
- Rural Residential zoning means a rural and quiet neighborhood.
- The LifeAustin outdoor amphitheater is not a residence and it is not quiet.
- Loud concerts on school nights are bad for school aged children.
- Harms property values. How would you feel if you could hear concert music inside your home?
- The approval of the outdoor amphitheater violates the letter and the spirit of the zoning code.

Actions YOU can take

1. Email your comments to BOA staff liaison, Leane Heldenfelds, Leane.Heldenfels@austintexas.gov
2. Please reference the case number: C15-2015-0147 and amphitheater address: 8901 SH 71 West.
3. Ask the Board of Adjustment to **grant** the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.
4. Ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA.

A hearing on the site plan and building permit appeals is on the BOA agenda for November 9, 2015 at 5:30 pm in City Council chambers. The neighborhoods have asked to postpone the hearing until December 9. We will update you later when the hearing date is set.

Jeanne C Kirk, CMP
National Account Manager
Experient
Sent from my iPhone

Posted by: Jeanne Kirk

Heldenfels, Leane

From: William-Bo [REDACTED]
Sent: Sunday, November 08, 2015 4:42 PM
To: Heldenfels, Leane
Subject: Reference to case # C15-2015-0147 - Life Austin Amphitheatre at 8901 SH 71 West

Ms Heldenfels,

I am writing this in reference to the Life Austin Amphitheatre on Hwy 71 West. While I am not a resident of any community that is affected by the noise created by this facility, I was house sitting for my daughter one weekend when there was a concert. I live in the Views of Belterra behind the Nutty Brown Cafe. Before we purchased our home we had researched the complaints about their amphitheatre and while we are occasionally able to hear a slight noise, it is nothing that disturbs us or our guests when enjoying evenings outdoors. When I heard the noise coming from the Life Austin Amphitheatre I felt like I was sitting in the middle of the performance. I could hear every word sung hear every note played and the crowd noise was very disruptive.

I am asking that the BOA grant the affected neighborhoods their requested appeal. The quality of life in these neighborhoods is certainly affected by the unsolicited noise coming from this facility. This does not seem to be the sort of facility that would be conducive to a residential zoning.

Thank you for your attention to this matter, Bobbie Moore

Heldenfels, Leane

From: RONI [REDACTED]
Sent: Sunday, November 08, 2015 4:23 PM
To: Heldenfels, Leane
Subject: Case C15-2015-0147 Resident of Covered Bridge

Hello Ms Heldenfels,

I am writing to you in reference to case number: C15-2015-0147 and the Life Austin amphitheater located at 8901 SH 71 West. I am urging you to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA. I want you to know that initially we were thrilled to hear we had a church moving in to our neighborhood but when the amphitheater was slipped in to the equation at the last minute with no public input I lost faith with the City of Austin having the best interest of it's citizens.

Here is an opportunity for the city to show that it does care about the quality of life of a lot of its' citizens over the personal wealth of one domain. I encourage you to please ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA. The church has done everything to undermine the quality of life of all it's neighbors. Please come visit the surrounding neighborhoods during one of the concerts. It won't be possible before Dec 9 because they changed the schedule in fear that you all might hear how intrusive they truly are to the peace and quiet of their neighbors. The next big concert is Dec 18 and they are charging for "passes" from \$13-\$45. All this under a Residential zone. I'm sure you've heard it all before but I feel compelled to do my part to encourage the city to do what is right and good for our area.

Thanks!

Roni Seemann
7324 Black Mountain Dr (Covered Bridge Subdivision)
Austin TX 73746

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 4:08 PM
To: Heldenfels, Leane
Subject: LifeAustin Church noise

Dear Leane,

IN reference to case: C15 2015 0147
8901 SH 71 West
78736

My home in Hill Country Estates is situated the furthest location from the Life Austin Amphitheater. I can hear the music in my backyard and on occasion the music has been so loud as to hear distinct lyrics. If I lived closer to the Amphitheater, I would consider my house not a home and I would sell it and move. The noise is that destructive.

This Amphitheater should never have been permitted.

Please grant the appeal filed by Hill Country Estates HOA and Covered Bridge POA and forward the TUP to the BOA.

Please go against what has been wrongly done. Please hear the voice of all families in these surrounding neighborhoods.

We are in no way opposed to the church and their activities. It is the level of intrusive and offensive noise that they create.

Best Regards,
Cynthia Harp
Hill Country Estate Resident

Heldenfels, Leane

From: Kristen [REDACTED]
Sent: Sunday, November 08, 2015 3:55 PM
To: Heldenfels, Leane
Subject: Case C15-2015-0147
[REDACTED]

Good Afternoon -

I'm a resident of Covered Bridge, a neighborhood in south Austin and in close proximity to Life Austin (8901 SH 71 West).

For many years my husband and I have expressed our concerns about the 1500 seat amphitheater that was dreamed for the property, planned and mapped for the property, constructed on the property and ultimately, to our amazement, launched on their property. Throughout this time, we have hoped for the best and prepared for the worst.

In 2010 we went so far as to put our home on the market. While we love where we live, we couldn't face the likelihood that our property values were going to dive once the amphitheater was built. It would ruin us financially. For 3 months, potential buyers expressed interest in purchasing our home and turned away once they learned that the large church under construction behind us was the one that planned to build the dreaded outdoor concert venue.

Last night was a prime example of life with an amphitheater in our back yard. I hosted a dinner party and had music playing throughout my house as well as on our 2 decks. As 6 of us on my lower deck were eating and talking, noise consumed our conversation. "What is that?" asked one of my guests. Another of my guests who is a sergeant with the Travis County Sheriff's Office answered her question, "That's an amphitheater. We get calls complaining about that thing all the time." The noise was audible above the music I was playing and our dinner conversation. This is the irritation we live with.

I implore you to accept our appeals regarding this matter.

Kind regards,
Kristen Cox
7312 Covered Bridge Dr.

Heldenfels, Leane

From: JDulln [REDACTED]
Sent: Sunday, November 08, 2015 3:25 PM
To: Heldenfels, Leane
Subject: Our concerns about the amphitheater at 8901 SH71 West

My wife and I share this email address and want to express our concerns about an amphitheater that is very near our home. The case number is C15-2015-0147 and the address of the amphitheater is 8901 SH 71 West.

We request that you ask the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA. Please ask the Board of Adjustment to direct staff to forward the TUP appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA.

This amphitheater is a significant inconvenience. We have concerns about the negative impact it may have on the value of our property and the noise it creates. Thank you for your assistance in this matter. Please let us know if you have any questions that we may answer regarding this matter

Jon and Judith Dullnig
7325 Black Mountain Drive
Austin, Texas 78736
512-288-1282

Heldenfels, Leane

From: Brad Pollard [REDACTED]
Sent: Sunday, November 08, 2015 2:00 PM
To: Heldenfels, Leane
Subject: case number: C15-2015-0147
[REDACTED]

Re: LifeAustin: 8901 SH 71 West

I live in Travis Country West, at least a mile (as the crow flies) from Life Austin and the amphitheater. Further, we are across highway 71 from the church, and the amphitheater points away from our neighborhood. I am still amazed that at night I can hear the music/bass from the amphitheater. We aren't even close to the church! I would be livid – beyond upset – if my home was closer to this amphitheater. The noise carries! It is loud!!

It seems crazy to me that this got approved in a residential area. Something is flawed in the process.

Brad Pollard

8413 Cobblestone, 78735

Heldenfels, Leane

From: MBBS [REDACTED]
Sent: Sunday, November 08, 2015 2:56 PM
To: Heldenfels, Leane
Subject: Case Number C15-2015-0147 re: 8901 SH 71 West
[REDACTED]

TO: Leane Heldenfels, Staff Liaison, City of Austin Board of Adjustment

Ms. Heldenfels,

We are residents of the Covered Bridge neighborhood in Austin and are requesting that the Board of Adjustment take the following actions with regard to the outdoor amphitheater constructed without required neighborhood input at 8901 SH 71 West:

- 1) We are asking that the BOA hearing on this matter be postponed until December 9, 2015 so that the Board has sufficient time to review this complex issue
- 2) We are asking that the Board grant the appeals filed by the Covered Bridge Property Owners Association and the Hill Country Estates Homeowners Association of the city decisions on the site plan and building permit for this amphitheater
- 3) We are asking that the Board grant the associations' appeal to the temporary use permit granted for this amphitheater.

The construction of an outdoor amphitheater in our rural residential neighborhood, by any organization, degrades the quality of life for those of us who live here and is inconsistent with city of Austin zoning regulations.

We appreciate the Board of Adjustment's consideration of this request.

Thank you.

Mary Braunagel-Brown
Bruce Brown
7321 Roaring Springs Dr.
Austin TX 78736

Heldenfels, Leane

From: Sandra Heflin [REDACTED]
Sent: Sunday, November 08, 2015 2:51 PM
To: Heldenfels, Leane
Subject: Case #: C15-2015-0147

Regarding Case # C15-2015-0147
Address: 8901 SH 71 West, Austin TX

Leane, I am writing you to let you know about my concerns regarding what I have seen since moving into Covered Bridge neighborhood in Oak Hill this past August. I couldn't live much closer to the amphitheater, I'm right up against the greenbelt on Roaring Springs. I could walk to the church if I wanted to.

I'm writing you to complain about noise, but not music. The noise from a couple of my neighbors complaining about this amphitheater is non-stop. I was dreading the first "concert" Life Austin put on because these neighbors (who are all online- I've never actually met anyone who has heard music from the church) are complaining so much. It turns out, i can't hear any music at all and this whole drama has been unnecessary.

Since August, my family, which consists of seven members, has heard music only ONE time and that was on ACL weekend, so we are not sure of the source.

We've had ample opportunities now to hear this "nuisance" and yet, we've heard nothing. I mentioned just that on a neighborhood website, Nextdoor, and I was quickly told that I need to support the neighbors who could hear it because it was the right thing to do. I was told to lie and say I could hear this mystery music because supposedly someone else could. When I responded, weeks later, that I did not feel comfortable doing so, as I would essentially be accusing someone of doing something I had no evidence of, several neighbors responded with such vitriol that I have removed myself from the board, in fear that these irate people may harm my property or family.

In part due to the online bullying, I am beginning to believe this whole amphitheater fight has nothing to do with sound coming from the amphitheater. I think it has more to do with a long-fought battle that some in the neighborhood are bitter about losing. I suspect that there may also be some anti-Christian sentiment going on because I was warned by a neighbor that several homes have had their Christian Christmas decorations vandalized in recent years. I really hope that is not the case.

Whatever the cause, I am saddened that this is the reality of the neighborhood I have just spent a lot of money and effort to move my family to. There are certainly much worse things that we could live next to than a church.

I implore you to research this and find the truth. I don't think any facility should be bullied like this by a few select neighbors, no matter how loud or organized those neighbors may be. From what I've read, this battle was

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already fought and the church agreed to keep their sound to a residential level. Either they have excellent acoustics or the "residential level" doesn't carry very far.

Thank you for your time. Feel free to contact me with any questions.

Sandra Pearson
512.994.7904

Sent from my iPhone

Heldenfels, Leane

From: Linda Lievens [REDACTED]
Sent: Sunday, November 08, 2015 2:42 PM
To: Heldenfels, Leane
Cc: Ron Lievens
Subject: LifeAustin Amphitheater

Case number: C15-2015-0147
RE: LifeAustin [REDACTED]
8901 SH 71 West
Austin, TX

Dear Leane,

I have lived in the Covered Bridge neighborhood for 10 years and have attended many meetings over these years regarding the building of the Dream City amphitheater, now called Life Austin. As a community, I feel we were never opposed to the church being built but were always concerned and intended to oppose the building of an outdoor musical amphitheater between many neighborhoods. This just never made sense and would surely have been opposed if we would have been given a chance to voice our opinions. We were told by Randy Phillips and other church representatives over the various meetings that this church intended to be a good neighbor, that our concerns were important to them and that they would NOT charge admittance to any concert because it was not a profit based venue.

While building the venue, they did install sound proofing, but even with that we can always hear their concerts. Even now as I am typing this email on a Sunday afternoon, a concert is going on and we can hear it when stepping out our front door. This is not what we anticipated when we build our beautiful home in the hill country in what was originally a nice fairly quiet subdivision. We can hear their concerts on Saturday evenings sitting outside in our backyard. They DO charge admittance for their concerts. And lets be honest... the pastor belongs to a successful Christian rock group so we knew that building this amphitheater meant music whenever they wanted and they truly do NOT take the concerns of their neighbors seriously because we have voiced our concerns over this amphitheater many, many times.

Please consider any options possible to stop this music venue. We were denied a voice as a community when it was approved and hope that there is some way to be heard now. Thank you for your consideration in this matter.

Regards,
Linda Lievens

Linda Lievens
8818 Towana Trail
Austin, TX 78736
512/913-1514

Heldenfels, Leane

From: Sandra Heflin [REDACTED]
Sent: Sunday, November 08, 2015 2:39 PM
To: Heldenfels, Leane
Subject: Covered Bridge / Life Austin

Leane, I am writing you to let you know about my concerns regarding what I have seen since moving into Covered Bridge neighborhood in Oak Hill this past August. I couldn't live much closer to the amphitheater, I'm right up against the greenbelt on Roaring Springs. I could walk to the church if I wanted to.

I'm writing you to complain about noise, but not music. The noise from a couple of my neighbors complaining about this amphitheater is non-stop. I was dreading the first "concert" Life Austin put on because these neighbors (who are all online- I've never actually met anyone who has heard music from the church) are complaining so much.

Since August, my family, which consists of seven members, has heard music only ONE time and that was on ACL weekend, so we are not sure of the source. We've had ample opportunities now to hear this "nuisance" and yet, we've heard nothing. I mentioned just that on a neighborhood website, Nextdoor, and I was quickly told that I need to support the neighbors who could hear it because it was the right thing to do. I was basically told to lie and say I could hear this mystery music because supposedly someone else could. When I responded, weeks later, that I did not feel comfortable doing so, as I would essentially be accusing someone of doing something I had no evidence of, several neighbors responded with such vitriol that I have removed myself from the board, in fear that these irate people may harm my property or family.

In part due to the online bullying, I am beginning to believe this whole amphitheater fight has nothing to do with sound coming from the amphitheater. I think it has more to do with a long-fought battle that some in the neighborhood are bitter about losing. I suspect that there may also be some anti-Christian sentiment going on because I was warned by a neighbor that several homes have had their Christian Christmas decorations vandalized in recent years.

Whatever the cause, I am saddened that this is the reality of the neighborhood I have just spent a lot of money and effort to move my family to. There are certainly much worse things that we could live next to than a church.

I implore you to research this and find the truth. I don't think any facility should be bullied like this by a few select neighbors, no matter how loud or organized those neighbors may be. From what I've read, this battle was already fought and the church agreed to keep their sound to a residential level. Either they have excellent acoustics or the "residential level" doesn't carry very far.

Thank you for your time. Feel free to contact me with any questions.

Sandra Pearson
512.994.7904
Sent from my iPhone

Heldenfels, Leane

From: [REDACTED]
Sent: Sunday, November 08, 2015 1:57 PM
To: Heldenfels, Leane
Subject: C12-2015-0147

Dear Ms Heldenfels,

I would like to first thank you for taking the time to "listen" to the many neighborhoods that have been writing to you.

My husband and I researched a dream home where we would have beautiful quiet nights with a sky full of stars. Neighbors that that would become dear friends, almost like family. In 1986 we found it. Hill Country Estates became our dream. We worked hard to make our back yard part of our living area. My 95 year old father came to live with us. He too loved being outside. Our dream has been shattered by a church, on 8901 SH 71 West, "Life Austin"!

The extreme loud "music" that we hear from their outdoor theater has changed our life. I want to share just two incidences among many with you. I have migraines. On night I had a severe migraine. The music from the church was so loud inside my house, my migraine became worst. I had no where to go to get away from the rattling windows and the booming base. My husband found me on the floor in the bathroom after vomiting for hours! Never has this happened! My 7 grandchildren cannot sleep when they come to visit because of this illegal outdoor theater!

I ask for your help and compassion to support the appeals filed by Hill Country Estate HOA and the Covered Bridge POA.

I also plead your help to direct staff to forward the TUP appeal filed by the Hill Country Estates HOA and Covered Bridge POA to the BOA.

We bought the lot next door to us as an investment. I seriously doubt it is an investment anymore. This MUST stop. This is NOT what our Austin is about.

Would you like to have this situation next to your home?

Thank you again for helping us.

Stephanie Werner
6907 Midwood Parkway
Austin, Tx 78736

Stephanie Werner